

Syllabus

IN THE MATTER OF
WALLACE G. CLARK AND NORMAN A. DODGE, TRADING
AS HYRAL DISTRIBUTING COMPANY

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

Docket 3726. Complaint, Feb. 28, 1939—Decision, Apr. 3, 1941

Where (1) two individuals, and (2) a corporation of which they were officers and directors and which, with the exception of a certain period, they fully owned and controlled; engaged in competitive interstate sale and distribution of a dental preparation known as Hyral; by advertisements disseminated through circulars, letters and other printed matter and by radio continuities broadcast from stations of interstate reception—

Represented that said Hyral was a notable new discovery in the field of dental hygiene which was both an antiseptic and a germicide and a cure or remedy for all mouth disorders, including bleeding gums, pyorrhea, and trench mouth, and constituted a competent and effective treatment for said conditions; that it would remove film, tobacco, food stains, and accumulated tartar from the teeth; would whiten teeth and prevent formation of tartar; correct foul breath, make condition of mouth entirely healthy, prevent loss of teeth; and make and keep gums firm;

Facts being that said product or powder, consisting of sodium perborate and sodium borate with pink coloring and flavoring, was not a new discovery but had long been used by members of the dental profession and in dentifrices; it would not cure trench mouth, though tending temporarily to inhibit growth of bacteria or germ causing it; nor, while it might, through its effervescent quality, remove loose particles of food lodged on the teeth, did it have any value in cleaning or whitening them or removing film; such effect as it might have on unpleasant breath odors would be limited to masking such odors temporarily; it had no special quality or value in whitening the teeth in excess of results obtained when used as an aid to the tooth brush, in which case its action would be the same as any ordinary dentifrice; and, except as above noted, it would not accomplish the results claimed;

With effect of confusing, misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and thereby, into purchase of said product, whereby substantial trade in commerce was unfairly diverted to them from competitors who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Randolph W. Branch and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Norman A. Dodge, of Fort Worth, Tex., for respondents.

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 Wallace G. Clark and Norman A. Dodge, and Hyral Distributing Co., a corporation, 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. The said respondents, Wallace G. Clark and Norman A. Dodge, both residents of the city of Dallas, State of Texas, were, for several years prior to April 1937, copartners trading and doing business under the name and style of Hyral Distributing Co., with their office and principal place of business in the city of Fort Worth, State of Texas, and were engaged in the business of manufacturing, distributing and selling a certain preparation known as "Hyrals," which is intended for use in the cure, mitigation, treatment or prevention of diseases in man. Respondents sold such preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and caused said preparation when sold by them to be transported from their aforesaid place of business in the State of Texas to purchasers thereof located in the States of the United States other than the State of Texas and in the District of Columbia. During that period respondents maintained a constant 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. The respondent Hyral Distributing Co. is a corporation organized and existing under the laws of the State of Delaware and having its office and principal place of business at 3902 McKinney Ave., in the city of Dallas, State of Texas. The respondents Dodge and Clark have at all times been respectively the president and the vice-president and general manager of the corporation and have dominated and controlled its affairs. The corporation is now, and has been for more than one year last past, engaged in the business of manufacturing, distributing and selling the said "Hyrals" to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Texas to the purchasers thereof located in States of the United States other than the State of Texas,

1095

Complaint

and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a constant 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. 3. In the course and conduct of their said businesses, the respondent Hyral distributing Co., a corporation, is now, and has been for more than 1 year last past, and respondents Clark and Dodge were, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and partnerships, and with individuals selling and distributing preparations and products designed and intended for and used in the treatment, relief and remedy of the conditions of the human body for which the respondents recommend, and have recommended, the use of the said "Hyral." Among such competitors in said commerce are and were many who do not, and did not, in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not, and did not, make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of the aforesaid businesses, the said respondents have disseminated and caused the dissemination of, and the respondent corporation is now disseminating and causing the dissemination of, false advertisements concerning the said preparation, by United States mails, in circulars and other printed or written matter, all of which have been and are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations, which had and have sufficient power to, and do and did, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, or originated, 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 said preparation, and said individual respondents have disseminated and caused the dissemination of, and the said corporate respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning the said product by various means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Complaint

32 F. T. C.

Among and typical of the false advertisements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, by respondents Clark and Dodge, are the following:

Hyral is a notable new discovery * * *

Hyral * * * H-Y-R-A-L * * * the unique dentifrice positively removed film and whitens teeth. Its continued use absolutely corrects and prevents all mouth disorders including Pyorrhea and Trench Mouth.

It makes the gums firm, hard and healthy as nature intended them to be—all of the ingredients of Hyral have cleansing and medicinal value. Hyral liberates oxygen in the mouth which penetrates into every crevice around and between the teeth, cleaning them thoroughly and killing harmful germs.—Hyral will make and keep your teeth wonderfully white and beautiful as nature intended.

Hyral removes tartar and keeps it away.

It liberates oxygen * * * dissolving film and loosening tartar. Hyral promotes the health of every part or organ it touches.

Hyral banishes sour tobacco breath, tobacco stain and taste; banishes that unpleasant dark brown morning-after mouth tang however caused and corrects fetid breath. It gives mouth hygiene 100% keeping the mouth cavity clean and wholesome.—Believe it or not, if Hyral were universally used mouth disorders of many kinds would practically disappear!—Allow Hyral to remain in your mouth several minutes to be absorbed, thereby cleansing it and destroying the germs that cause pyorrhea or other mouth ailments.—Bleeding gums (the beginning of pyorrhea) usually are relieved in three to ten days by daily twice-a-day use of Hyral; used more often, quicker results follow. Trench Mouth usually in about the same time.

Hyral will reach and clean thoroughly those unexposed surfaces of the teeth that the brush never reaches.

Hyral whitens the teeth and gives complete mouth hygiene.

* * * making your teeth white and beautiful—

Is there any such disorder affecting your health or embarrassing you with repulsive odors known as halitosis? Would you be pleased to have a dentifrice 100% cleansing and efficient which will keep your mouth in healthy condition? If so, use Hyral—the last word in mouth hygiene.

Among and typical of the false advertisements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid by respondent Hyral Distributing Company are the following:

It promotes oral hygiene.

Proper daily attention to mouth hygiene is the one sure way to white, sparkling teeth.

For—a breath beyond reproach use Hyral.

So don't you let dull, dingy, unattractive teeth mar your social or business opportunities. Hyral—will give you assurance—it will assist you in restoring the natural luster to your teeth.

Remember "Save Teeth first with Hyral tooth powder."

It helps to make the gums firm and healthy and the teeth more secure—You with tender gums or pyorrhea! Get Hyral.

It will help to prevent you from losing your teeth and assist you to regain sound healthy gums and gleaming beautiful teeth. Especially valuable to those whose teeth are threatened with pyorrhea.

Gradually tartar is formed, the gums are irritated and germs gain entrance to the gum tissues * * *. This is one way tender gums and pyorrhea get their start. Once the tissues are invaded nature seems powerless to overcome these germs. Hyral, the unique and popular dentifrice combats this destructive process at every step of its development including the final stage. It removes the film that coats the surface of the teeth. It penetrates into crevices between teeth and gums. It attacks the germs that have gained entrance into the gum tissue. Every ingredient in Hyral has antiseptic or germicidal qualities. It is 100% effective.

You teeth will acquire a new lustre from the day you start using Hyral—its distinctive properties make it especially valuable to those whose teeth are threatened with pyorrhea. Hyral—dissolves in the mouth setting free tiny bubbles of oxygen that foam into every crevice of the teeth purifying, deodorizing, cleansing.

Hyral removes food and tobacco stains.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body, for which respondents recommend and have recommended the preparation, and its effectiveness in the treatment of the said ailments and conditions, respondents Dodge and Clark directly, and by implication, among other things have represented that "Hyral" is a new and important discovery in the field of dental hygiene; that it will positively remove film and whiten the teeth; that it will prevent all disorders of the mouth, including pyorrhea and trench mouth, regardless of their cause, and is a cure and adequate remedy for all of them; that it will make the gums firm, hard, and healthy; that all its ingredients have cleansing and medicinal value; that it liberates oxygen in the mouth, which reaches and cleans all crevices, kills germs, loosens and removes tartar, and keeps it from forming; that it promotes the health of any part or organ that it touches; that it banishes tobacco breath, all tobacco stains, tobacco taste, dark-brown morning after mouth tang, regardless of its cause, and corrects fetid breath; that it will give a 100% hygienic condition to the mouth; that the universal use of "Hyral" would result in the practical disappearance of many mouth disorders; that its use twice a day is a complete treatment for, and will relieve, bleeding gums and trench mouth in three to ten days; that it will reach and thoroughly clean unexposed tooth surfaces and every crevice between the teeth and under the gums; that the use of

Complaint

32 F. T. C.

"Hyal" assures sparkling, white, beautiful teeth and a healthy, mouth, and is a competent remedy for halitosis; and respondent Hyral Distributing Co. in like manner has represented that "Hyal" promotes oral hygiene which is the one sure way to white and sparkling teeth; that it assures the user of an unobjectionable breath; that it will give the user business and social poise; that it will prevent the user from losing his teeth; that it will impart firmness and health to the gums and make the teeth gleaming, beautiful and more secure; that it will avert the deposition of tartar, will avert and is a competent treatment for pyorrhea, and that it will remove all stains on the teeth due to food or tobacco.

PAR. 6. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertising. In truth and in fact "Hyal" is composed of ingredients which have long been known to the medical and dental professions, as have their properties. "Hyal" is neither a new nor a notable discovery, either in its ingredients or in their combination. While "Hyal" may remove the film deposited on the teeth as a consequence of eating and the action of the oral fluids, it has no effect in whitening the structure of the teeth themselves. "Hyal" will not prevent the user from being afflicted with any and all mouth disorders, including pyorrhea and trench mouth, regardless of their cause, nor is it an adequate remedy or cure for them. "Hyal" will not make the gums firm or hard nor restore unhealthy gums to health. The medicinal effects of some of the ingredients are negligible and the quantity of others in the preparation is insufficient to have any therapeutic significance. The oxygen released by the use of "Hyal" may be to some extent of cleansing and germicidal action, but is neither completely cleansing nor completely germicidal. "Hyal" will not loosen nor remove tartar deposits nor will it prevent their deposition. "Hyal" does not promote the health of all parts or organs which it touches. Its effect on the breath and taste in the mouth is but transitory. It will not remove all tobacco stains from the teeth. Its use will not render the mouth 100% hygienic, and such hygienic effect as it may have is only temporary. The universal use of "Hyal" would not cause many mouth disorders to substantially disappear. "Hyal" will not completely destroy all pyorrhea or other germs, and many mouth ailments are not caused by germs. Used twice daily it will not relieve bleeding gums or trench mouth in 3 to 10 days, nor is it a competent treatment for these conditions. It will not reach nor thoroughly clean unexposed tooth surfaces nor under the gums. All users of "Hyal" are not

1095

Findings

assured of sparkling, white, beautiful teeth and clean, healthy mouths as a result of such use, nor is it a competent remedy for halitosis. The possession of white and sparkling teeth and an unobjectionable breath depends upon other factors as well as cleanliness of the oral cavity. Social or business assurance will not be created or fostered by the use of "Hyral." "Hyral" will not in all cases prevent the loss of the user's teeth. It has no effect upon the gums nor will it cause the teeth to remain or become more secure or, in the absence of other factors, to gleam or be beautiful. It will not remove all tobacco and food stains from the teeth.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading representations and claims disseminated as aforesaid with respect to said 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 claims are true, that the preparation possesses the properties claimed and represented, and will accomplish the results indicated, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation.

As a result trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness and use of their respective preparations and products, as described in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondents to competition in commerce among and between the various states of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 February 28, 1939, issued and thereafter served its complaint in this proceeding upon the respondents Wallace G. Clark and Norman A. Dodge, individuals, and upon Hyral Distributing Co., a corporation, charging them with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

Findings

32 F. T. C.

After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Norman A. Dodge, attorney for the respondents, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Commission finds that the respondent Hyral Distributing Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Fort Worth, Tex. However, said corporation did not obtain a license to do business in the State of Texas until the year 1937. During the period from 1934 to 1937, the individual respondents, Wallace G. Clark and Norman A. Dodge conducted business as a copartnership under the trade name of Hyral Distributing Co. Said individual respondents were also owners of all the capital stock of the corporate respondent. On April 8, 1937, subsequent to the obtaining of a license to do business in the State of Texas by said corporate respondent, the individual respondents, Wallace G. Clark and Norman A. Dodge, entered into an agreement with Wesley Gilliland, Burton Gilliland, Evan E. A. Stone and C. H. Sterrett of Dallas, Tex., whereby said individual respondents, Wallace G. Clark and Norman A. Dodge, agreed to convey 50% of the capital stock in said corporation, Hyral Distributing Co., to said parties subject to certain forfeiture provisions on the nonperformance of certain conditions with reference to increasing the business. Pursuant to this agreement, the capital stock of said corporation was conveyed as provided and the place of business of said corporation was removed from Fort Worth, Tex., to the city of Dallas, Tex. The said individual respondents continued as officers and directors of said corporation but the management thereof was placed under the supervision of Evan

1095

Findings

E. A. Stone. This agreement was continued until the year 1938, at which time said agreement was terminated and the stock of said corporate respondent was transferred back to the said individual respondents, Wallace G. Clark and Norman A. Dodge, who since that date have had full ownership and control of said corporation.

During all the times mentioned herein the individual respondents and the corporate respondent have been engaged in the sale and distribution of a certain dental preparation known as "Hyral" and have caused said preparation when sold to be transported from their places of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said dental preparation 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 said business as hereinabove described, the respondents have been engaged in substantial competition in commerce among and between the various States of the United States with other individuals, corporations, firms, and partnerships, engaged in the business of selling and distributing dentifrices and preparations for use in the treatment of conditions of the human mouth, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Distributing Co., and the corporate respondent, Hyral Distributing Co., have disseminated false, deceptive and misleading representations concerning the efficacy of their preparation "Hyral" and the therapeutic value of said preparation. Such representations were made in circulars, letters and other printed matter and by radio continuities advertising said preparation broadcast from stations located in the State of Texas, which had sufficient power to and did convey said continuities to listeners in States other than the State of Texas. Among and typical of the statements and representations contained in such advertisements disseminated as aforesaid by the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Distributing Co., are the following:

Hyral is a notable new discovery * * *.

Hyral * * * H-Y-B-A-L * * * the unique dentifrice positively removes film and whitens teeth. Its continued use absolutely corrects and prevents all mouth disorders including Pyorrhea and Trench Mouth.

It make the gums firm, hard and healthy as nature intended them to be—all of the ingredients of Hyral have cleansing and medicinal value. Hyral liberates

Findings

32 F. T. C.

oxygen in the mouth which penetrates into every crevice around and between the teeth, cleaning them thoroughly and killing harmful germs.—Hyal will make and keep your teeth wonderfully white and beautiful as nature intended.

Hyal removes tartar and keeps it away.

It liberates oxygen * * * dissolving film and loosening tartar.

Hyal banishes—tobacco stain—and corrects fetid breath. It gives mouth hygiene 100% keeping the mouth cavity clean and wholesome.—Believe it or not, if Hyal were universally used mouth disorders of many kinds would practically disappear!—Allow Hyal to remain in your mouth several minutes to be absorbed, thereby cleansing it and destroying the germs that cause pyorrhea or other mouth ailments.—Bleeding gums (the beginning of pyorrhea) usually are relieved in three to ten days by daily twice-a-day use of Hyal; used more often, quicker results follow. Trench Mouth usually in about the same time.

Hyal will reach and clean thoroughly those unexposed surfaces of the teeth that the brush never reaches.

Is there any such disorder affecting your health or embarrassing you with repulsive odors known as halitosis? Would you be pleased to have a dentifrice 100% cleansing and efficient which will keep your mouth in healthy condition? If so, use Hyal—the last word in mouth hygiene.

Among and typical of statements and representations contained in the advertisements disseminated by the corporate respondent, Hyal Distributing Co., are the following:

It promotes oral hygiene.

Proper daily attention to mouth hygiene is the one sure way to white, sparkling teeth.

For—a breath beyond reproach use Hyal.

—It will assist you in restoring the natural luster to your teeth.

Remember, "Save Teeth first with Hyal tooth powder".

It helps to make the gums firm and healthy and the teeth more secure—You with tender gums or pyorrhea! Get Hyal.

It will help to prevent you from losing your teeth and assist you to regain sound healthy gums and gleaming beautiful teeth. Especially valuable to those whose teeth are threatened with pyorrhea.

Gradually tartar is formed, the gums are irritated and germs gain entrance to the gum tissues. This is one way tender gums and pyorrhea get their start. Once the tissues are invaded nature seems powerless to overcome these germs. Hyal, the unique and popular dentifrice combats this destructive process at every step of its development including the final stage. It removes the film that coats the surface of the teeth. It penetrates into crevices between teeth and gums. It attacks the germs that have gained entrance into the gum tissue. Every ingredient in Hyal has antiseptic or germicidal qualities. It is 100% active.

Your teeth will acquire a new lustre from the day you start using Hyal—its distinctive properties make it especially valuable to those whose teeth are threatened with pyorrhea. Hyal—dissolves in the mouth setting free tiny bubbles of oxygen that form into every crevice of the teeth purifying, deodorizing, cleansing.

Hyal removes food and tobacco stains.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that "Hyral" is a notable new discovery in the field of dental hygiene which is both an antiseptic and a germicide and that it is a cure or remedy for all mouth disorders, including bleeding gums, pyorrhea and trench mouth, and that it constitutes a competent and effective treatment for such conditions; that said preparation will remove film, tobacco and food stains and accumulated tartar from the teeth and that it will whiten the teeth and prevent the formation of tartar; that it will correct foul breath, give an entirely hygienic condition to the mouth and prevent the loss of teeth.

PAR. 5. In the course and conduct of its business the corporate respondent, Hyral Distributing Co., and the individual respondents, Wallace G. Clark and Norman A. Dodge, individually and as officers and directors of said corporate respondent, have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning said preparation "Hyral" by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive misrepresentations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities and in circulars and other advertising literature, are the following:

Hyral * * * The amazing, different dentifrice not only cleans the teeth but helps to keep the gums firm.

It cleans the teeth and helps make firm gums.

Through the use of statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that Hyral is a different or new dentifrice in the field of dental hygiene which will be effective in making and keeping the gums firm.

PAR. 6. The foregoing statements and representations used and disseminated by the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Co., and by the corporate re-

Findings

32 F. T. C.

spondent, Hyral Distributing Co., in the manner and form as hereinabove set forth are grossly exaggerated, false, and misleading. Respondents' preparation "Hyral" is a powder consisting of one part sodium perborate and two parts sodium borate, flavored with oils of peppermint and wintergreen and colored pink with mercurochrome. This preparation is not a new discovery as both sodium perborate and sodium borate have long been known to and have been used by members of the dental profession and to some extent these ingredients have been used in dentifrice preparations. Sodium perborate when mixed with the saliva liberates oxygen which tends to inhibit the growth of the bacteria or germ causing the condition known as trench mouth but will not of itself or in combination with sodium borate affect a cure of such condition. Respondents' preparation as constituted is mildly antiseptic with no germicidal properties and has no therapeutic value in the treatment of bleeding gums or other mouth disorders in excess of that afforded by a mild antiseptic. In the case of trench mouth, this preparation might have some beneficial effects as a complementary treatment in temporarily inhibiting the growth of the bacteria causing trench mouth, but it does not constitute a cure or remedy for this condition. This preparation has no value in the treatment of the condition known as pyorrhea. It does not make the gums firm, hard, or healthy, or prevent the loss of teeth. The effervescent quality of this preparation might remove loose particles of food lodged on the teeth, but has no value in cleaning the teeth, removing film, or in any way whitening the teeth. This preparation will not remove tartar from the teeth or prevent its formation or have any effect on tobacco stains on the teeth. Its effect on unpleasant breath odors would be limited to temporarily masking such odors. This preparation has no peculiar or special qualities which would be of value in cleansing and whitening the teeth in excess of the results obtained when used as an aid to the tooth brush, in which case its action would be the same as any ordinary dentifrice.

PAR. 7. The aforesaid statements and representations of respondents relative to the efficacy and to the effectiveness in use of the preparation "Hyral" have the capacity and tendency to, and do, confuse, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of such preparation because of said erroneous and mistaken belief. Substantial trade in said commerce is thereby unfairly diverted to respondents from their competitors who are engaged in the sale and distribution of similar preparations and other preparations designed

1095

Order

and intended for similar usage, who truthfully advertise the extent of the value and effectiveness of their respective preparations.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and also constitute unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and brief of counsel for the Commission filed herein; 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, Hyral Distributing Co., a corporation, and its officers, and Wallace G. Clark and Norman A. Dodge, individuals, and all of their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a certain dental preparation designated as "Hyral," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondents' preparation is a new discovery or that it has germicidal properties.

2. That respondents' preparation is a cure or remedy for bleeding gums or other mouth disorders, or that it constitutes a competent or effective treatment for such conditions in excess of that afforded by a mild antiseptic.

3. That respondents' preparation is a cure or remedy for trench mouth or that it constitutes a competent or effective treatment therefor in excess of temporarily inhibiting the growth of the bacteria causing trench mouth.

Order

32 F. T. C.

4. That respondents' preparation has any therapeutic value in the treatment of pyorrhea, or that it is a cure or remedy for such condition.

5. That said preparation will make the gums firm, hard or healthy, or that its use will prevent the loss of teeth.

6. That respondents' preparation will remove tobacco stains, or will remove or prevent tartar formations on the teeth.

7. That respondents' preparation will have any effect upon unpleasant breath odors in excess of temporarily masking such odors.

It is further ordered, That the respondent Hyral Distributing Co., a corporation, and its officers, and Wallace G. Clark and Norman A. Dodge, individually and as officers and directors of said corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their preparation "Hyral," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from directly or indirectly:

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 advertisement represents directly or through inference that said preparation designated as "Hyral" is a new or different dentifrice or has any special properties which would be effective in making the gums firm or in keeping the gums firm.

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 "Hyral," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That each of the said 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
DAVID KRITZIK, TRADING AS GENERAL MERCHANDISE
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3780. Complaint, May 2, 1939—Decision, Apr. 3, 1941

Where an individual engaged in conducting a premium and novelty business, and in competitive interstate sale and distribution of blankets, radios, cigarettes, candies, and other articles of merchandise;

Furnished to purchasers various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes for sale and distribution of articles concerned to ultimate consumers by lottery and chance, including, as illustrative and typical, assortments consisting of (1) two blankets and a punchboard for use in selling and distributing said products under a plan by which purchasers securing from the 100 numbers secreted in the board, the two numbers corresponding to those in holes designated as grand prize became entitled to and received said blankets, others received nothing other than privilege of a punch, and cost of punch was determined by figures contained on slip of paper secured from hole selected; (2) twelve key holders equipped with dry cell and bulb, embedded in the upper portion of punchboard, secured by those selecting from the 400 covered holes, for the five cents paid, numbers corresponding to those displayed in connection with each of said twelve key holders, others receiving nothing for their money; and (3) a miniature radio, with a 110-hole punchboard, with ten punches free and prices of remaining 100 varying from 1 cent to 22 cents, as determined by slip secured, person punching out a certain number receiving said radio and others receiving nothing; and thereby

Placed in the hands of others various devices for the distribution of his merchandise by means of a game of chance, gift enterprise, or a lottery, contrary to the established public policy of the United States Government and in competition with others who are unwilling to and do not use in the distribution of their product any method involving chance;

With result, as consequence of its said methods, that trade was unfairly diverted to him from such competitors:

Held, That such acts and practices were all to the prejudice and injury of the public, and competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. L. P. Allen, Jr., *Mr. D. C. Daniel* and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Weinstein & Kline, of Milwaukee, Wis., for respondent.