

IN THE MATTER OF
PASCAL COMPANY, INC.

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

Docket 3768. Complaint, Apr. 19, 1939—Decision, Apr. 19, 1941

Where a corporation engaged in manufacture, and in substantial competitive interstate sale and distribution of its "Breatheasy" treatment, consisting of "Breatheasy" liquid medicinal preparation and atomizer or so-called "Nebulizer" for use in administering same, packed in small pasteboard box for offer and sale principally through drug stores—

- (a) Represented, for a time, through advertising pamphlets circulated through the mail and by distributors, that its said "Breatheasy" was a remedy or cure for chronic bronchitis, heart disease and cardiac distress, gastric ulcer, serum rash, urticaria (hives), and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs, and neuralgia and neuritis, notwithstanding fact it was neither a remedy nor a competent treatment for said ailments, but, by reason of its epinephrine content, would be definitely harmful if used by a person suffering from high blood pressure, toxic goiter, diabetes or heart disease; and
- (b) Represented thereafter, through advertisements in newspapers and magazines and other media, and through circular form letters, that said "Breatheasy" was a treatment for asthma and hay fever, and also, in said circular letters, for kindred ailments, and in small booklet included in package containing its preparation and device, that said product was recommended also for "other allergic conditions of the skin, such as eczema, urticarias, and rashes of similar nature," and that regular use thereof several times a day would tend to clear up those conditions and often make them disappear even when they had been present for years, notwithstanding fact said product did not constitute an effective treatment for chronic bronchitis or for urticaria or skin diseases of the erythematous and eczematous types; and
- (c) Failed to set forth in its advertising literature other than in booklet aforesaid, and in its labels, facts material thereto through warning or notice that use thereof would be harmful if user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease, and in its said booklet, not seen by prospect until after purchase had been made and package opened, only inadequately revealed such facts in inconspicuous statement on one of inside pages;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that its said representations were true, and that said preparation had therapeutic values represented, and into purchase of substantial quantities of its said product on account of such beliefs, thus induced, and with result that substantial trade was diverted unfairly to it from its competitors who do not misrepresent the therapeutic value of their products:

Held, That such representations and its acts and practices in relation thereto prior to amendment of Federal Trade Commission Act on March 21, 1938,

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were to the prejudice and injury of the public and of its competitors, and constituted unfair methods of competition in commerce within intent and meaning of said act, and that said representations and acts and practices subsequent thereto, including failure to disclose possible harm in use of said product, were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within intent and meaning of said act as amended.

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

Mr. Reuben J. Martin and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Clarence L. Gere and *Mr. Bert C. Ross*, of Seattle, Wash., 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 Pascal Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pascal Co., Inc., is a corporation created and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located in the Textile Tower Building, in the city of Seattle, within the State of Washington. Said respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States, of a medicinal preparation known as "Breatheasy" and of an atomizer or so-called "Nebulizer" for use in administering the preparation, "Breatheasy," which said preparation and nebulizer constitute together the "Breatheasy treatment". Respondent causes said preparation and said nebulizer, when sold, to be transported from its place of business in the State of Washington to its customers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said "Breatheasy treatment" in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, said respondent is in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution in com-

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merce between and among the various States of the United States and in the District of Columbia, of medicinal preparations and of atomizers or nebulizers for use in connection therewith.

PAR. 2. In the course and conduct of its said business as hereinbefore set out in paragraph 1, and for the purpose of inducing the purchase of said medicinal preparation "Breatheasy" and the said nebulizer for use in connection therewith, respondent has made and is now making false, deceptive, and misleading representations concerning the medical and therapeutic value of said medicinal preparation by means of advertising folders and circulars distributed generally throughout the United States, and by means of advertisements inserted in magazines and newspapers having a general circulation among the various States of the United States.

Among and typical of the false statements and representations which said respondent has used and is now using in its advertisements in magazines and newspapers, and in advertising folders and circulars is the following:

Breatheasy is beneficial according to authorities in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx and lungs; and in neuralgia and neuritis. This by no means completes the list, but it suffices to show the enormous value of this substance elaborated by the adrenal glands and what may happen if they are deficient.

By means of said statement and others similar thereto, not herein specifically set out, respondent has represented and does now represent that its said preparation "Breatheasy" and the "Breatheasy treatment" is a cure or remedy and constitutes a competent and efficient treatment for chronic bronchitis, heart disease, cardiac distress, gastric ulcer, serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs and neuralgia and neuritis.

PAR. 3. In truth and in fact, respondent's representations and implications as to the therapeutic value of said medicinal preparation "Breatheasy" and the "Breatheasy treatment" are false and grossly exaggerated and greatly exceed those which might truthfully be made for said preparation and said treatment. "Breatheasy" and the "Breatheasy treatment" is not a cure nor a remedy nor does it constitute an effective or competent treatment for chronic bronchitis, heart disease, cardiac distress, gastric ulcer, serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types,

inflammation of the nose, throat, tonsils, larynx and lungs, and neuralgia and neuritis.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparation under the conditions prescribed, or under such conditions as are customary or usual, may in some cases cause injury to health. By reason of the fact that respondent's preparation consists of epinephrine or synthetic adrenalin, the use of said preparation would be definitely harmful if used by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

PAR. 5. The use by the said respondent of the foregoing false and deceptive and misleading representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation. As a result, trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar medicinal preparations or other preparations intended for similar usage who truthfully advertise the effectiveness and therapeutic value of their respective preparations. In consequence, thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and respondent's 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 the 19th day of April 1939 issued and thereafter served its complaint in this proceeding upon the respondent, Pascal Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the said

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act. After the issuance and service of the said complaint and the filing of respondent's answer thereto, a hearing was had at which testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission. The respondent was represented at the said hearing by Clarence L. Gere, Esq., who offered no testimony. The aforesaid testimony and evidence were introduced 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 briefs in support of the complaint and in opposition thereto (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 respondent, Pascal Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, and its office and principal place of business are located in the Textile Tower Building, in the city of Seattle, State of Washington. The respondent is now, and has been since 1935, engaged in the manufacture and in the sale and distribution of a medicinal preparation, in liquid form, known as "Breath-easy" and an atomizer or so-called "Nebulizer" for use in administering said preparation. The two products are packed in a small pasteboard box in which form they are offered for sale and sold to the purchasing public principally through drug stores. Each box in which the aforesaid products are packed contains, among other things, directions for using the product and a pamphlet containing advertising matter and other information. The two products constitute what the respondent calls the "Breatheasy Treatment."

In the course and conduct of its aforesaid business respondent has caused, and now causes, its products, when sold, to be transported from its place of business in the State of Washington, to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said products in

commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now, and has been during all the time herein mentioned, in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar medicinal preparations and of atomizers or nebulizers for use in connection therewith in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business prior to January 1936 the respondent, in promoting the sale of its said products, caused certain advertising matter in pamphlet form, to be circulated through the mail and by distributors of respondent's products, throughout the various States of the United States and in the District of Columbia, in which certain false, deceptive, and misleading representations concerning the medicinal and therapeutic value of "Breatheasy" were made. Among and typical of the false and misleading statements and representations used as aforesaid is the following:

Breatheasy is beneficial, according to the authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rash, urticaria (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx and lungs; and in neuralgia and neuritis. This by no means completes the list but it suffices to show the enormous value of this substance elaborated by the adrenal glands, and what may happen if they are deficient.

PAR. 3. By the use of the aforesaid representation in the manner set forth above, the respondent represented that "Breatheasy" is a remedy or cure for chronic bronchitis, heart disease and cardiac distress, gastric ulcer, serum rash, urticaria (hives) and other skin diseases of the erythematous and eczematous types; inflammation of the nose, throat, tonsils, larynx, and lungs; and neuralgia and neuritis. Based upon a stipulation entered into on the record herein, the Commission finds that in truth and in fact, "Breatheasy" is not a remedy or cure for the aforesaid ailments and disorders, and does not constitute an effective or competent treatment therefor.

PAR. 4. Respondent's product "Breatheasy" is a chemical compound containing racemic epinephrine hydrochloride in the strength of 2 percent plus in an isotonic salt solution with sodium vanoline sulf-oxy-late as a preservative or stabilizer. By reason of the fact that "Breatheasy" contains epinephrine, the use of said preparation would be definitely harmful if used by a person suffering from high blood pressure, toxic goiter, diabetes, or heart disease.

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PAR. 5. From January 1936 until the present date, the respondent advertised "Breatheasy" as a treatment for asthma and hay fever. Said advertisements appear in newspapers and magazines, and various other media, all of which have a substantial interstate circulation or distribution. All of these advertisements contained respondent's name and address and were for the purpose of inducing and likely to induce the purchase of respondent's products by readers thereof writing direct to respondent and ordering the products offered for sale. Among and typical of the complete statements and representations contained in said advertisements are the following:

- (1) *Breatheasy*
for
Asthma
and
Hay Fever

- (2) Do You Want Relief From
ASTHMA

* * * * *

Breatheasy
For Asthma Sufferers

- (3) *Breatheasy*
For the relief of
ASTHMA
and Hay Fever
Sold Under Guarantee

- (4) ASTHMA
and
Hay Fever
Sufferers Use
BREATHEASY
Thousands of satisfied users
attest to the infinite relief
obtained from Breatheasy

- (5) ASTHMA
Don't Gasp for Breath
Breatheasy
Sold on Money Back Guarantee!

In addition to the foregoing advertisements, respondent mails circular form letters to prospects in territories or locations where there are

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not subagents or sales outlets close to them. These letters are for the purpose of inducing, and are likely to induce, the purchase of respondent's preparation and device. In such letters respondent represents the preparation as—

The Breatheasy method for the relief of Asthma, Hay Fever and kindred ailments.

None of the advertisements nor the circular letters mailed direct to prospects contain any statement whatever warning such prospective purchasers that the use of the preparation "Breatheasy" would be harmful if the user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease. Likewise no notice of the harmful effects of respondent's products, if used by persons suffering from any of such conditions, appears on the carton container or on the label for the preparation.

PAR. 6. Respondent includes in the package containing its preparation and device a small booklet containing information with respect to the preparation. In this booklet "Breatheasy" is recommended for chronic bronchitis. In this same booklet "Breatheasy" is recommended not only for the relief of asthma and hay fever but also for "other allergic conditions." It is further represented therein—"In allergic conditions of the skin, such as eczema, urticarias, and rashes of similar nature the regular use of Breatheasy several times a day will tend to clear up these conditions and in many cases make them disappear even when they have been present for years." Based upon the stipulation between counsel which appears in the record, the Commission finds that "Breatheasy" does not constitute an effective or competent treatment for chronic bronchitis or for urticaria or for skin diseases of the erythematous and eczematous types.

This booklet does contain a warning or cautionary statement as to harmful effects, which statement appears inconspicuously placed on page 4 under the caption "Summary." It reads—

The use of Epinephrin by inhalation is generally recognized by the medical profession as a satisfactory method of affording relief in the aforementioned conditions. There are very few instances where a person suffering with allergic conditions, with other complications, cannot use Epinephrin himself with safety. However, anyone suffering from some complication as goiter, diabetes or very high blood pressure, should consult his family physician and use BREATHEASY as he directs.

This booklet is not seen by the prospect until the purchase is made and the package opened. The warning statement is not so located in the booklet or so worded, in the light of the findings of fact herein made, to adequately reveal to prospective purchasers facts material in the

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light of the representations made for such preparation in respondent's advertising and material with respect to consequences which may result from the use thereof under the conditions prescribed in the advertisements thereof or under such conditions as are customary and usual. The Commission finds that such material facts which have not been revealed in any of the respondent's advertising literature except the above-referred to booklet in which they are inadequately revealed are that the preparation "Breatheasy" should not be used by those suffering from high blood pressure, toxic goiter, diabetes, or heart disease.

PAR. 7. The use by the respondent of all the foregoing false advertisements disseminated as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the representations made are true and that the preparation has the therapeutic values represented and into the purchase of substantial quantities of respondent's said products on account of the beliefs so induced. As a result of such erroneous belief with respect to the advertisement set out in paragraph 2 hereof trade has been diverted unfairly to respondent from its aforesaid competitors who do not misrepresent the therapeutic value of their products.

CONCLUSION

The representations made by the respondent prior to 1936, which representations are set forth in paragraph 2 hereof, and respondent's acts and practices in relation thereto are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The representations made by respondent subsequent to 1936 and prior to March 21, 1938, to the effect that the preparation "Breath-easy" is a competent and effective treatment for chronic bronchitis and for eczema, urticaria (hives), and other skin diseases of the erythematous and eczematous types, which representations are set out in paragraph 6 hereof, and respondent's acts and practices in relation thereto, are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The representations made by respondent subsequent to March 21, 1938, to the effect that the preparation "Breatheasy" is a competent and effective treatment for chronic bronchitis and for eczema, urticaria (hives), and other skin diseases of the erythematous and

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eczematous types, which representations are set out in paragraph 6 hereof, and respondent's acts and practices in relation thereto, and respondent's acts and practices in failing to disclose to prospective purchasers in all of its advertising literature which is set out in paragraphs 5 and 6 hereof that the use of the preparation "Breath-easy" would be harmful if the user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease, or to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondent, testimony, and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and briefs filed herein (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pascal Company, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of a medicinal preparation designated "Breatheasy," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

Representing that said preparation "Breatheasy" is a remedy or cure for chronic bronchitis; for heart disease or cardiac distress; for gastric ulcer; for serum rash, urticaria (hives), eczema, or other skin diseases of the erythematous and eczematous types; for inflammation of the nose, throat, tonsils, larynx, or lungs; or for neuralgia or neuritis; or that said preparation constitutes an effective or competent treatment for any of such diseases or disorders.

It is further ordered, That the respondent, Pascal Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a medicinal preparation

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designated "Breatheasy" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from 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 is a cure or remedy for chronic bronchitis, eczema or urticaria (hives) or other skin diseases of the erythematous and eczematous types, or constitutes a competent and effective treatment for any of such disorders; or which advertisement fails to reveal that said medicinal preparation cannot be used with safety by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

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 medicinal preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof, or which fails to reveal that said medicinal preparation cannot be used with safety by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

It is further ordered, That the 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
D.D.D. CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3972. Complaint, Dec. 14, 1939—Decision, Apr. 19, 1941*

Where a corporation engaged in interstate sale and distribution of its D.D.D. Prescription; by means of advertisements disseminated by mail, in newspapers and periodicals, and in circulars and other printed or written matter—

Represented that its aid preparation was a cure or remedy for eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning, and constituted a competent treatment for said disorders and conditions and would stop the itching associated therewith, through such statements, among others, as "STOP SCRATCHING. RELIEVE ITCHING SKIN *Quickly*. Even the most stubborn itching of eczema, blotches, pimples, athlete's foot, rashes, and other externally caused skin eruptions, quickly yields * * * Soothes the irritation and quickly stops the most intense itching," "STOP ITCHING TORTURE This Quick Way. For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes, and other externally caused skin eruptions * * *," "ITCH OF ECZEMA, RASHES AND OTHER EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY," and "For the itching of skin irritations such as rashes, hives, and insect bites, as well as minor cases of ivy and oak poisoning, D. D. D. Liquid, ordinary strength, is recommended as an effective and ideal remedy;"

Facts being said preparation's properties were limited to those of an antipruritic, antiseptic, and astringent, with possibly mild germicidal properties; its therapeutic value in treatment of said conditions was limited to affording temporary relief from symptoms of itching or that resulting from use of an antipruritic, astringent, antiseptic, and mild germicidal agent; use of terms "blotches" and "rashes" in its said advertisements was too general and misleading, in that they might be due to varying systemic causes or to scarlet fever, measles, jaundice, and other constitutional conditions, respectively, and product in question was without therapeutic value in their treatment when thus caused; use of such terms as "other externally caused skin eruptions" had tendency to mislead public into belief that conditions referred to always resulted from external causes, and that its said preparation would have therapeutic value in treatment thereof, regardless of cause; while its use of words "stop itching" implied falsely that use of such preparation eliminated condition causing symptom of itching; With effect of misleading and deceiving substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations were true, and of causing it, because of said belief, to purchase said product:

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.