

Syllabus

IN THE MATTER OF
D.D.D. CORPORATION

COMPLAINT, 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.

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Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. W. E. Lucas of Haight, Goldstein & Hobbs, of Chicago, Ill., and *Mr. R. G. Sappenfeld* of Geneva, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that D.D.D. Corporation, a corporation, hereinafter referred to as the 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, D.D.D. Corporation, is a corporation organized under the laws of the State of Delaware, with its principal place of business at Batavia, Ill. Respondent is now and for several years last past has been engaged in the manufacture, sale, and distribution of a medicinal preparation known as D.D.D. Prescription. Respondent causes said preparation, when sold, to be transported from its place of business in Batavia, Ill., to purchasers thereof located at various points in the several States of the United States, other than the State of Illinois, and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said medicinal preparation, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, 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 its said prep-

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aration, and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparation, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

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 to cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Dr. Dennis' original formula. Greaseless and stainless. 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, use cooling antiseptic, liquid D.D.D. PRESCRIPTION. Original formula of Doctor Dennis. * * *

ITCH

STOPPED IN A HURRY BY D.D.D. * * *

Are you tormented with the itching torture of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION.

ITCH

OF ECZEMA, RASHES AND OTHER

EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY. USE D.D.D. PRESCRIPTION

SKIN RASH

RELIEVED * * * ITCHING STOPPED

For quick relief from itching of eczema, rashes, pimples, athlete's foot, and other externally caused skin eruptions, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Greaseless, stainless, dries fast. Stops the most intense itching in a hurry.

Do you want to STOP that ITCH? All right! Step to your *drug* store. Get a bottle of *D.D.D. Prescription*. Apply this cooling, soothing, antiseptic liquid to your skin—and watch it Stop the ITCH in a Jiffy!

Stop that ITCH in a jiffy with D.D.D. PRESCRIPTION.

Stops that itching almost instantly.

It's time to realize that D. D. D. Prescription will Stop the misery of an Itching Skin in a Jiffy! Try it for hives, eczema, winter rash and other externally caused Skin Itching.

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For the itching of skin irritation 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.

For itching between the toes, cracked skin, etc., try this treatment.

SPECIAL NOTE!

After you have finished your treatment with D. D. D. and stopped the itching and cleared up your skin, the matter of keeping your complexion clean, clear and attractive in the future is important.

PAR. 3. Through the use of said statements and representations disseminated as aforesaid and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that its preparation, D.D.D. Prescription, is a cure or remedy for, and a competent treatment of, eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning; that said preparation is a cure or remedy for and a competent treatment of rashes and other externally caused skin eruptions; that said preparation stops itching from the above-named diseases and conditions.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as aforesaid are grossly exaggerated, misleading, and untrue. In truth and in fact many of the diseases and conditions mentioned by the respondent as externally caused skin itching for which its product is recommended are in fact of constitutional origin, and as to such conditions respondent's preparation will have no therapeutic effect other than to temporarily relieve the symptom or itching. Said preparation will have no value in arresting pigment degenerations of the skin, which are referred to by the respondent as "blotches." Said preparation is not a cure or remedy for eczema, pimples, athlete's foot, rashes, or hives, or a competent treatment therefor, and said preparation has no therapeutic value in the treatment of such conditions in excess of temporarily alleviating the symptoms of itching. This preparation would not be a competent treatment for rashes or other externally caused skin eruptions except in those cases where a temporary acting anti-pruritic agent having some antiseptic properties might be of value.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic value and effectiveness of its product sold and distributed under the trade name of D. D. D. Prescription has had, and now has, the capacity and tendency to, and does, mislead and deceive a sub-

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stantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 14, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the the respondent, D.D.D. Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Clark Nichols, attorney for the Commission, and in opposition to the allegations of the complaint by W. E. Lucas and R. G. Sappenfield, attorneys for the respondent, before Lewis C. Russell, 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 the report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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. Respondent, D.D.D. Corporation, is a corporation organized under the laws of the State of Delaware, with its principal place of business at Batavia, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a medicinal preparation known as D.D.D. Prescription. Respondent causes said preparation, when sold, to be trans-

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ported from its place of business in Batavia, Ill., to purchasers thereof 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 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and in circulars and other printed or written matter, are the following:

STOP SCRATCHING

RELIEVE ITCHING SKIN *Quickly*

Even the most stubborn itching of eczema, blotches,⁶ pimples, athlete's foot, rashes, and other externally caused skin eruptions, quickly yields to cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Dr. Dennis' original formula. Greaseless and stainless. 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, use cooling antiseptic, liquid D.D.D. PRESCRIPTION. Original formula of Doctor Dennis. * * *

ITCH

STOPPED IN A HURRY BY D.D.D.

Are you tormented with the itching tortures of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION.

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OF ECZEMA, RASHES AND OTHER EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY.

USE D.D.D. PRESCRIPTION

SKIN RASH

BELIEVED * * * ITCHING STOPPED

For quick relief from itching of eczema, rashes, pimples, athlete's foot, and other externally caused skin eruptions, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Greaseless, stainless, dries fast. Stops the most intense itching in a hurry.

Do you want to STOP that ITCH? All *right!* Step to your *drug* store. Get a *bottle* of D.D.D. Prescription. Apply this cooling, soothing, antiseptic liquid to your skin—and watch it Stop the Itch in a Jiffy!

Stop that ITCH in a jiffy with D.D.D. PRESCRIPTION.

Stops that itching almost instantly.

It's time to realize that D.D.D. PRESCRIPTION will STOP the misery of an ITCHING SKIN in a JIFFY! Try it for hives, eczema, winter rash and other externally caused skin itching.

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.

For itching between the toes, cracked skin, etc., try this treatment.

SPECIAL NOTE!

After you have finished your treatment with D.D.D. and stopped the itching and cleared up your skin, the matter of keeping your complexion clean, clear and attractive in the future is important.

PAR. 3. The Commission finds that through the use of said statements and representations disseminated as aforesaid, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented, and does now represent, directly and by implication, that its preparation, D.D.D. Prescription, is a cure or remedy for eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning, and that it constitutes a competent treatment for such disorders and conditions. By the same means the respondent also represents that said preparation will stop the itching associated with the above-named disorders and conditions.

PAR. 4. The Commission further finds that the aforesaid representations and claims used and disseminated by the respondent are grossly exaggerated, misleading, and untrue. Respondent's prepara-

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tion is composed of alcohol, phenol, thymol, glycerine, salicylic acid, chloral hydrate, methyl salicylate, distilled water, and coloring matter, and its properties are limited to those of an antipruritic, antiseptic, and astringent, with possibly mild germicidal properties.

The Commission further finds that the condition known as eczema is due to a variety of causes, many of which are not definitely known to the medical profession. Such causes may be of an internal or systematic nature and, in some cases, of external origin. In the treatment of such condition, whether due to internal or external causes, the alleviation of itching is only a partial treatment to avoid the danger of infection from scratching and further irritation. In order to effect a cure, it is necessary for the physician to determine the underlying cause of such condition. Based upon the medical testimony the Commission finds that respondent's preparation has no therapeutic value in the treatment of eczema, whether due to internal or external causes, in excess of affording temporary relief from the symptom of itching, as it cannot be relied upon to affect or remove the underlying cause of such disorder or condition. In like manner, in the treatment of hives the therapeutic value of respondent's preparation is limited to the temporary alleviation of the symptom of itching. Pimples, as understood by the medical profession, are generally due to systemic conditions, and the use of respondent's preparation has no therapeutic value in the treatment thereof, in excess of affording temporary relief from the symptom of itching. The therapeutic value of respondent's preparation in the treatment of athlete's foot, insect bites, ivy and oak poisoning, or any other externally-caused skin disorder is limited to that afforded by the temporary relief of the symptom of itching, or to that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

The Commission further finds that the use of the terms "blotches" and "rashes" as disorders for which this preparation might be used as a treatment is too general and, to that extent, misleading to the public. Blotches may be caused from a depigmented or hyperpigmented condition of the skin, or from other causes of a systemic nature. Rashes may be caused by scarlet fever, measles, jaundice, drug erythemas, and other constitutional conditions. Respondent's preparation has no therapeutic value in the treatment of these disorders when due to such systemic or constitutional conditions.

The use by the respondent of the term "other externally caused skin eruptions" and statements of similar nature in connection with diseases and conditions which may be of a systemic, as well as

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external, origin has the tendency to mislead and deceive the public into the belief that such conditions always result from external causes and that respondent's preparation would have therapeutic value in the treatment of such conditions regardless of cause.

The Commission further finds that the use of the words "stop itching," as appears in respondent's advertising hereinabove set forth, without proper qualification, has the tendency to mislead and deceive the public into the belief that the use of respondent's preparation will either permanently or temporarily eliminate the disease or condition causing the symptom of itching.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic value and effectiveness of its product sold and distributed under the trade name of D.D.D. Prescription 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 and representations are true, and has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and report of the trial examiner thereon and the respondent's exceptions thereto, briefs filed herein and oral arguments by counsel for the Commission and counsel for the respondent, 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, D.D.D. Corporation, its officers, representatives, agents, and employees, directly or through any corpo-

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rate or other device, in connection with the offering for sale, sale, or distribution of its preparation, D.D.D. Prescription, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondent's preparation, D.D.D. Prescription, is a cure or remedy for eczema, or that it has any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptom of itching.

(b) That respondent's preparation, D.D.D. Prescription, is a cure or remedy for pimples or hives, or that it has any therapeutic value in the treatment thereof, in excess of affording temporary relief from the symptom of itching.

(c) That respondent's preparation has any therapeutic value in the treatment of any disorder of the skin caused by internal or systemic conditions, in excess of affording temporary relief from the symptoms of itching.

(d) That said preparation has any therapeutic value in the treatment of blotches or rashes appearing on the skin, when due to systemic or constitutional conditions.

(e) That respondent's preparation has any therapeutic value in the treatment of athlete's foot, insect bites, and cases of ivy and oak poisoning, in excess of that afforded by the temporary alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

(f) Through the use of the words "and other externally caused skin eruptions," or other words or phrases of similar import or meaning in connection with diseases or conditions which may be of a systemic or internal origin, that such diseases and conditions are, in fact, solely of external origin or that respondent's preparation has therapeutic value in the treatment of such diseases and conditions regardless of their origin.

(g) Through the use of the words "stop itching" or other words or phrase of similar import or meaning, that respondent's preparation will either permanently or temporarily eliminate the disease or condition causing the symptom of itching or has any therapeutic value in excess of that afforded by the temporary alleviation of the symptom

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of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

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, D.D.D. Prescription, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.