

IN THE MATTER OF

JOHN J. FULTON COMPANY

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

Docket 3819. Complaint, June 14, 1939—Decision, June 13, 1941

Where a corporation engaged in compounding its "Uvursin" medicinal preparation for diabetes, and in competitive interstate sale and distribution thereof to members of the medical profession, together with a suggested diet which it recommended for use therewith; by means of advertisements disseminated through the mails, in periodicals and other publications, and in circulars and other printed or written matter—

Represented that its said "Uvursin" had substantial therapeutic value in the treatment of diabetes mellitus and constituted a competent and effective treatment therefor, and that, when used with the recommended diet, it substantially increased the efficacy and therapeutic value of such diet as a treatment for aforesaid condition;

Facts being there is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient; said product was essentially a combination of crude plant materials which have enjoyed long reputation, particularly in folklore medicine, for treatment of urinary conditions, and general action of which is mildly diuretic; and use thereof, by increasing the flow of urine, would accomplish no more than possible reduction of amount of sugar therein without affecting the blood sugar level; the diet, recommended by said corporation, conformed closely to type physicians would recommend in diabetic cases and any presumed effectiveness of said product would be due to the spontaneous remissions characteristic of the disease and to dietary control of symptoms rather than to any therapeutic value in and of itself; and use thereof might be definitely harmful and even fatal to patient in giving a false sense of security and delaying inauguration of effective treatment, including, as required, administration of insulin, for which no substitute is known to modern medicine;

With the effect of misleading purchasers and prospective purchasers into the erroneous and mistaken belief that aforesaid false and misleading representations were true, and into the purchase of substantial quantities of its said medicinal preparation, thereby diverting trade unfairly to it from competitors:

Held, That such acts and practices, as above set forth, 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. William L. Pencke and *Mr. Donovan Divet* for the Commission.

Mr. Zach Lamar Cobb, of Los Angeles, Calif., 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 John J. Fulton Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, John J. Fulton Co., is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and having its office and principal place of business at 88 First Street, in the city of San Francisco, State of California.

Respondent is now, and has been for several years last past, engaged in the business of compounding, selling, and distributing a medicinal preparation designated "Uvursin." The respondent causes the said preparation, when sold, to be transported from its aforesaid place of business in the State of California, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, 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 is now, and has been during all the times mentioned herein, 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 with persons, firms, and partnerships engaged in the sale and distribution of preparations designed and used for the treatment of the conditions of the human body for which respondent recommends the use of its said preparation. Among said competitors are many who do not misrepresent the therapeutic value or the effectiveness in use of their respective preparations.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparation, by United States mails, by insertion in periodicals and other publications having a general circulation throughout the United States and in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation; and has disseminated and is now disseminat-

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ing, 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 the said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

UVURSIN (Capsules, 5 gr.) is a mild and innocuous oral treatment for Diabetes Mellitus. UVURSIN combines the desirable principles of Chimaphila, Eupatorium, Pareira, Taraxacum, Uva Ursi, Juglans, Lappa, Inula, Eriodictyon and Zea Mais. To overcome any tendency to bowel astringency a little senna is added. With the above are incorporated potassi nitras and sodii boras, one grain of each to the dose. * * *

Physicians have been using UVURSIN and sending us favorable reports on its efficiency in Diabetes Mellitus for more than a decade.

These reports show the normal period of symptomatic improvement as being 10 to 14 days from time treatment is started, and clinical improvement, as disclosed by reduced urinary sugar, from 14 to 21 days.

* * *

UVURSIN an efficacious, innocuous, oral treatment for diabetes.

Diabetes gangrene yields to UVURSIN as do other symptoms, the line of demarcation usually beginning to show definitely by about the 20th day of treatment, followed by complete recovery where patient persists in diet and treatment.

UVURSIN is being recognized as the preferred treatment in diabetes mellitus.

Respondent distributes to purchasers of such preparation a suggested diet and recommends that such diet be followed in connection with the use of such preparation.

Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent represents that "Uvursin" is a competent and effective cure or remedy for, and has substantial therapeutic value in the treatment of, diabetes mellitus and that such preparation, when used with the diet recommended by respondent, substantially adds to and increases the efficacy and therapeutic value of such diet as a treatment for diabetes mellitus.

PAR. 4. The aforesaid statements and representations by the respondent are misleading and untrue and constitute false advertisements. Said preparation is not a competent or effective cure or remedy for diabetes mellitus. Said preparation has no therapeutic value in the treatment of diabetes mellitus. Said preparation, when used with the diet recommended by respondent, or with any other diet, does not add to or increase the efficacy or the therapeutic value of the diet as a treatment for diabetes mellitus.

PAR. 5. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said preparation containing drugs. As a direct result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to the respondent from its said competitors who truthfully represent the effectiveness in use of their respective preparations. In consequence thereof injury is being, and has been, done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of 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 June 14, 1939, issued and subsequently served its complaint upon the respondent, John J. Fulton Co., a corporation, charging it 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. 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 William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Zach Lamar Cobb, attorney for the respondent, before Miles J. Furnas, a trial 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, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments by Donovan Divet, attorney for the Commission, and Zach Lamar Cobb, attorney for the respondent, and the Com-

mission 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, John J. Fulton Co., is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and having its office and principal place of business at 88 First Street in the city of San Francisco, State of California.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of compounding a medicinal preparation designated "Uvursin" which is recommended by the respondent as a treatment for diabetes, and in the sale and distribution of this medicinal preparation to members of the medical profession located in various States of the United States. Respondent causes said preparation, when sold, to be transported from its place of business in the State of California, or from the State of origin of such shipment, to purchasers located in various States of the United States other than the State of origin of such shipments. 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. 3. In the course and conduct of its aforesaid business, the respondent is now, and during all the times mentioned herein has been, engaged 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 with persons, firms, and partnerships engaged in the sale and distribution of preparations designed and used for the treatment of conditions of the human body for which respondent recommends the use of its said preparation.

PAR. 4. 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 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 statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in periodicals and other publications, and by circulars and other printed or written matter are the following:

Year after year, doctors report favorable results with Uvursin.

Physicians have been using Uvursin and sending us favorable reports on its efficacy in diabetes mellitus for more than a decade.

Is not that reason enough for you to give it a thorough clinical test in one of your cases?

These reports show normal period of symptomatic improvement as being ten to fourteen days from time treatment is started, and clinical improvement, as disclosed by reduced urinary sugar, from fourteen to twenty-one days. * * *

Oral—Innocuous—Efficacious.

In diabetes mellitus a successful oral treatment.

Uvursin (capsules, 5 gr.) is a mild and innocuous oral treatment for diabetes mellitus. Uvursin combines the desirable principles of chimaphila, eupatorium, pareira, taraxacum, uva ursi, juglans, lappa, inula, eriodictyon, and zeo mais. To overcome any tendency to bowel astringency a little senna is added. With the above are incorporated potassi nitras and sodii boras, one grain of each to the dose. * * * Other than the fact that the combined infusions are innocuous, the ingredients as explained will mean practically nothing, even to the experienced therapist, for the reason that few of the items are used for the cataloged characteristics of the alcohol extracts as outlined in the Pharmacopoeia.

Diabetic Gangrene. Diabetic gangrene yields to Uvursin as do other symptoms, the line of demarcation usually beginning to show definitely by about the twentieth day of treatment, followed by complete recovery where the patient persists in diet and treatment.

Respondent distributes to purchasers of such preparation a suggested diet and recommends that such diet be followed in connection with the use of such preparation.

PAR. 5. Through the use of the aforesaid statements and others of similar import or meaning not specifically set out herein, the respondent represents that its medicinal preparation "Uvursin" has substantial therapeutic value in the treatment of diabetes mellitus and constitutes a competent and effective treatment for such condition and that when said preparation is used with the diet recommended by the respondent, it substantially adds to and increases the efficacy and therapeutic value of such diet as a treatment for diabetes mellitus.

PAR. 6. On the subject of the therapeutic value of respondent's preparation Uvursin, three expert witnesses were called at the instance of the Commission. Two of these witnesses were professors of pharmacology in outstanding medical schools and had devoted

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much study to the subject of diabetes. The third witness was a practicing physician of many years' experience specializing in diabetes and who was, at the time of the hearing, in charge of one of the diabetic services at the Los Angeles County General Hospital. All of these witnesses occupy eminent places in their professions. The testimony of these experts shows, and the Commission finds, that respondent's preparation *Uvursin* is not a competent or effective treatment of diabetes mellitus and has no therapeutic value in the treatment of this condition and will not add to or increase the efficacy or therapeutic value of any diet used in the treatment of diabetes mellitus.

PAR. 7. Diabetes mellitus is a disturbance of carbohydrate metabolism in which the blood sugar is elevated to abnormally high levels, due to a decrease in the internal secretion of the pancreas, among the most serious complications of which are acidosis and ketosis, often leading to diabetic coma and sometimes death.

Diabetes mellitus is diagnosed by proper tests made to determine the blood sugar level under appropriate conditions and also by the appearance of sugar in the urine. The treatment consists of administration of proper diet. If that is insufficient to reduce the blood sugar level to normal, insulin is given, which is an extract of the pancreas administered by hypodermic injection. There is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient.

Respondent's preparation *Uvursin* consists of the following ingredients: *chimaphila*, a variety of wintergreen; *cupatorium*, a plant known as thoroughwort; *pareira*, the root of *chondrodendron*; *taraxacum*, commonly known as dandelion; *uva ursi*, commonly known as bearberry; *juglans*, popularly known as butternut bark; *lappa*, popularly known as burdock; *inula*, botanically known as *elecampane*; *eriodictyon*, popularly known as mountain-balm; and *zea mais*, which is commonly known as corn. To these materials have been added *senna* and also some potassium nitrate and sodium borate. However, this preparation is essentially a combination of crude plant materials.

The formula or statement of the ingredients of this preparation means little or nothing to the average practitioner, for, as stated in respondent's circular,

Other than the fact that the combined infusions are innocuous, the ingredients as explained will mean practically nothing, even to the experienced therapist, for the reason that few of the items are used for the cataloged characteristics of the alcohol extracts as outlined in the *Pharmacopela*.

Furthermore the respondent does not supply a quantitative formula for the information of physicians who are solicited to use its preparation.

The plant materials listed in respondent's preparation have enjoyed a very long reputation, particularly in folklore medicine, for the treatment of urinary conditions, and some of these plant materials were formerly used in the form of tea for bladder and kidney diseases. Their action in general is mildly diuretic and promotes an increased flow of urine, and the senna is added to produce a mild laxative effect. The potassium nitrate and sodium borate contained in this preparation have little or no effect, other than possibly to add to diuretic action. Some of these crude drugs contain insulin and other carbohydrates, which the body may utilize in lieu of ordinary sugars if there is proper metabolic condition prevailing in the body. However, the amount of these crude drugs which is recommended to be administered daily, namely, 30 grains, has no significant effect other than to add very slightly to the amount of carbohydrates which the body is already unable to properly handle when the condition of diabetes exists.

Respondent's product has no effect on the essential diabetic disturbance. By increasing the flow of the urine it will dilute the amount of sugar which has been discovered, and by increasing the amount of urine the percentage of sugar would necessarily drop, but this would not affect the blood sugar level. The use of respondent's preparation without diet would not accomplish any more than the possible reduction of the amount of sugar in the urine, due to its diuretic properties. The existence of diabetes or improvement in diabetic cases cannot be determined by examination of the urine alone, but blood sugar examination is also necessary.

Diabetic gangrene may be precipitated by arteriosclerosis, injury, or infection. The most frequent thing, however, is a combination of these factors, arteriosclerosis plus infection or injury. Gangrene is not necessarily an indication of extreme severity of diabetes but depends upon the blood supply, or potency of the arteries, as well as the adverse effects of abnormally high sugar levels.

Diabetes is a disease in which there may be spontaneous or temporary remissions from time to time, depending partly on the character of the diet. The diet recommended with Uvursin by the respondent conforms closely to the type of diet that physicians would recommend in diabetic cases to reduce the sugar intake, increase the alkaline reserve, and reduce generally the conditions under which symptoms of diabetes mellitus may be manifest.

The preparation Uvursin is not an efficacious treatment for diabetes mellitus, as it does not in any way deal with the causes of the disease. In view of the fact that diabetes is a disease in which spontaneous remission occurs and in view of the fact that the character of the symptoms can, in most instances, be controlled by an appropriate diet, the presumed effectiveness of Uvursin would be due to a combination of these circumstances in individual cases and not to any therapeutic value of the preparation itself. The use of this preparation may be definitely harmful to a patient suffering from diabetes mellitus, in that it would give a false sense of security and delay the inauguration of effective treatment.

The pancreas is a secreting gland which secretes certain enzymes into the digestive tract for the digestion of fat and protein and secretes chemical insulin into the blood stream for handling carbohydrates through all the body. Failure of the pancreas to secrete a sufficient amount of insulin for the purposes of the body, results in the condition known as diabetes, and where there has been a deterioration in the pancreas, it is necessary that needed insulin be supplied artificially.

Insulin was discovered in 1922 and is an extract of the pancreatic gland of animals, such as cattle, sheep, and pigs. Its action, when administered hypodermically, is to supplement the insulin of the pancreas. In some cases it helps to revive the pancreas where no deterioration has taken place. In those cases where diet alone is not effective in restoring action of the pancreas, the failure to give insulin increases the severity of the diabetic condition and may result in diabetic coma and death. In such conditions there is nothing known to modern medicine which will supplant or replace the use of insulin.

PAR. 8. The respondent offered as expert witnesses four practicing physicians, who testified as to experience in the use of respondent's preparation Uvursin in individual cases. Three of these testified to the use of urinalysis test only, to determine sugar, no blood test having been made. The fourth physician did use the blood test but testified that he usually began his treatment with the use of insulin, going to respondent's product in those cases where the patient refused to use the hypodermic needle for the administration of insulin. All four of these physicians testified to the use of the diet in connection with respondent's product, and where serious recurrence of sugar in the urine appeared after discontinuance of respondent's product, it was also admitted that a discontinuance or failure to follow the diet prescribed had occurred.

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After giving full consideration to the testimony of these physicians, their method of diagnosis, and also the characteristics of diabetes, in that spontaneous remissions may occur and also the possibility of control of the symptoms by diet, the Commission is of the opinion, and finds, that the testimony in the record based upon experience in individual cases is of little probative value, as compared to the expert testimony in the record based upon general knowledge.

PAR. 9. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to, and does, mislead purchasers and prospective purchasers into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said medicinal preparation. As a direct result thereof, trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States, of medicinal preparations designed and used for the treatment of the conditions of the human body for which respondent recommends the use of its said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and other evidence taken before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed herein, and oral arguments by Donovan Divet, counsel for the Commission, and by Zach Lamar Cobb, 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, John J. Fulton Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale, sale, or distribution of its medicinal preparation "Uvursin," or any other product 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 that respondent's preparation "Uvursin" constitutes a competent or effective treatment for diabetes or has any therapeutic value in the treatment of diabetes.

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 respondent's medicinal preparation "Uvursin," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

Complaint

IN THE MATTER OF
B. T. CLIFTON TRADING AS ASSOCIATED SALES
AGENCY

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

Docket 4201. Complaint, July 26, 1940—Decision, June 13, 1941

Where an individual engaged in the competitive interstate sale and distribution of clocks, knives, fountain pens, pipes, watches, cigarette cases, cigarette lighters, and other articles of merchandise—

Furnished to purchasers various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of said merchandise to the ultimate consumer wholly by lot or chance, and included, as typical, assortment consisting of a number of aforesaid articles, together with a 300-cell, 12-section punchboard, for use in sale of said articles under a plan by which purchaser of a punch, at 5 cents, punching a designated number, and the purchaser punching the last remaining cell in each of the 12 sections, receive a specified article, value of which was in excess of 5 cents, others receiving nothing for their money other than the privilege of punching;

With result of thereby placing in the hands of others lottery devices for use in distributing said merchandise to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States Government; and whereby trade was unfairly diverted to him from his competitors who did not, in the distribution of their merchandise, use such methods:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou*, for the Commission.

Mr. Robert Morel Montgomery, of Birmingham, Ala., 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 B. T. Clifton, individually, and trading as Associated Sales Agency, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows: