

IN THE MATTER OF

NEO-VIM COMPANY, AND W. C. POLLARD, A. L. RIAFF,
L. M. JENSEN, CARL G. ROSSEL, EDWIN L. MILLER, AND
L. R. DILLOWCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3969. Complaint, Oct. 10, 1940¹—Decision, June 14, 1941

Where a corporation and several individuals, who were at various times officers and managing directors thereof and formulated, directed and controlled its policies and practices or participated therein, engaged in interstate sale and distribution of their "Neo-Vim" or "Neo-Vém" medicinal preparation as a tonic, and of their "Hi-Ho Tooth Paste" for use on teeth and gums; by means of advertisements disseminated through the mails, in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented, directly or through implication that their said "Neo-Vim" or "Neo-Vém" was a competent and effective tonic which supplied the user with increased energy and vitality and increased the appetite, that it served to increase the quantity, and improve the quality, of the blood, and would increase the flow of gastric juices and otherwise aid digestion, and that it was a competent and effective treatment for indigestion;

Facts being, said product was not a competent or effective tonic, and had no such beneficial effects or therapeutic value except as an ordinary laxative; and

- (b) Represented that their "Hi-Ho Tooth Paste" possessed unusual and superior qualities for brightening the teeth, kept the gums healthy and firm, would remove all stain, film, and discoloration from the teeth irrespective of cause, alter the natural or original color of the tooth enamel and make any teeth white and sparkling, and that it prevented impure breath and offensive breath odors;

Facts being said preparation was not a competent or effective agency for brightening the teeth except as an ordinary cleanser, and served no other purpose than as an ordinary dentifrice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and of causing it, as a result of such belief, to purchase substantial quantities of their preparations:

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.

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

Mr. R. A. McQuat for the Commission.

Mr. Owen B. Sherwood, of Columbus, Ohio, for respondents.

¹ Amended and supplemental.

AMENDED AND SUPPLEMENTAL 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 Neo-Vim Co., a corporation, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Neo-Vim Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and having its office and principal place of business at 400 North High Street, Columbus, Ohio.

Respondents, Riaff and Jensen, were until May 1939 officers and managing directors of the corporate respondent and formulated, directed, and controlled the policies and practices of the corporate respondent. The mailing address of each of said respondents is 400 North High Street, Columbus, Ohio.

Respondents, Pollard, Rossel, Miller, and Dillow, are now and for varying periods of time since March 1938 have been officers and managing directors of said corporate respondent and formulate, direct, and control the policies and practices of said corporate respondent. The mailing address of each of said respondents is 400 North High Street, Columbus, Ohio.

The respondents are now, or since March 1938 have been, engaged in the business of selling and distributing a medicinal preparation designated "Neo-Vim" or "Neo-Vem," recommended for use as a tonic, and a cosmetic designated Hi-Ho Tooth Paste, recommended for use on the teeth and gums. Respondents cause and have caused their said preparations, when sold, to be transported from their aforesaid place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their said preparations 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by the United States mails and

Complaint

33 F. T. C.

by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing and which are likely to induce directly or indirectly the purchase of their said products 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 United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

A good tonic, to keep the system in good condition, may be just the thing to keep you well. Now, Neo-Vim is a tonic that is designed to aid in increasing appetite, to relieve that stuffiness after meals, to help digestion and also to help build red blood.

Are you feeling well right now—full of that pep and energy that is needed around these busy holidays? Perhaps you need a good tonic like Neo-Vim. This tonic is designed to relieve stomach distress, stuffiness after eating, increases appetite, and helps to build good red blood.

Maybe you are not feeling well right now—perhaps you are troubled with indigestion, have no appetite, and feel generally run down. Then—we'd say Neo-Vim will probably be a fine tonic for you because Neo-Vim will tone up your system by helping to restore appetite, will increase the flow of gastric juices, and will aid digestion and relieve that stuffy feeling after eating. It is mildly laxative and will help to make red blood, so necessary for good health.

Hi-Ho Tooth Paste * * * is so invigorating, keeps the gums healthy. Don't let dingy, discolored teeth or bad breath chase away your friends. Have a smile that your friends will envy by using Hi-Ho Tooth Paste regularly.

You might just add a little more to your brush and massage your gums too, it is certainly healthy and helps the gums stay firm, and once you have firm gums, your teeth are going to shine out like studded diamonds.

Hi-Ho toothpaste * * * has such a refreshing flavor that it sweetens the breath, so that you never need worry about offending.

PAR. 3. Through the use of the foregoing representations, and other representations similar thereto not specifically set forth herein, the respondents represent and have represented, directly or through inference that their medicinal preparation Neo-Vim or Neo-Vem is a competent and effective tonic which supplies the user with increased energy and vitality and increases the appetite; that it serves to increase the quantity of blood in the body and improves the quality of the blood; that it will increase the flow of gastric juices and otherwise aid digestion; that it is a competent and effective treatment for indigestion.

Respondents also represent in the manner aforesaid that their product *Hi-Ho Tooth Paste* possessed unusual and superior qualities for brightening the teeth; that it keeps the gums healthy and adds firmness to the gums; that said tooth paste will remove all stain, film, and discoloration from the teeth irrespective of the cause thereof, and will alter the natural or original color of tooth enamel and make any teeth white and sparkling; that it prevents impure breath and offensive breath odors.

PAR. 4. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, deceptive, and untrue and constitute false advertisements. In truth and in fact respondents' product *Neo-Vim* or *Neo-Vem* is not a competent or effective tonic. It is wholly incapable of supplying the user with increased energy or vitality. It will not serve to increase the appetite. It will not increase the quantity of blood in the body nor will it improve the quality of the blood. It will not increase the flow of the gastric juices nor will it otherwise aid digestion. It is not a competent or effective treatment for indigestion. In truth and in fact respondents' preparation has no therapeutic value except as an ordinary laxative.

Respondents' product, *Hi-Ho Tooth Paste*, is not a competent or effective agency for brightening the teeth except insofar as its use as an ordinary cleanser of the teeth will effect such result. Said tooth paste will not remove stain, film, or discoloration, except those of a surface character, from the teeth. It will not serve to keep the gums healthy or add firmness to the gums. It will not prevent impure breath or offensive odors. In truth and in fact, said product serves no purpose other than as an ordinary dentifrice for the cleaning of the teeth.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their preparations, disseminated as aforesaid, 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 said advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 10, 1940, issued and subsequently served its amended complaint in this proceeding upon the respondents, Neo-Vim Co., a corporation, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individually and as officers of said corporation, charging them 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 amended complaint and the filing of respondents' answers thereto, in which answers respondents admitted all the material allegations of fact set forth in said amended complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, testimony and other evidence were introduced to show the extent to which Carl G. Rossel participated in the acts and practices charged in the amended complaint, before Lewis C. Russell, 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, the proceeding regularly came on for final hearing before the Commission on said amended complaint, the answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the amended complaint, 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, Neo-Vim Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and having its office and principal place of business at 400 North High Street, Columbus, Ohio.

Respondents, A. L. Riaff and L. M. Jensen, are individuals having their mailing address at 400 North High Street, Columbus, Ohio, and were, until May 1939, officers and managing directors of the corporate respondent and formulated, directed, and controlled the policies and practices of the corporate respondent.

Respondents, W. C. Pollard, Edwin L. Miller, and L. R. Dillow, are individuals having their mailing address at 400 North High Street, Columbus, Ohio, who are now, and for varying periods of time since May 1938, have been, officers and managing directors of said corporate respondent and formulate, direct, and control the policies and practices of said corporate respondent.

Respondent, Carl G. Rossel, is an individual having his mailing address at 400 North High Street, Columbus, Ohio, and prior to February 1940, was an officer of said corporate respondent, and as such officer participated in the formulation, direction, and control of the policies and practices of the corporate respondent.

The respondents, since March 1938, have been engaged in the business of selling and distributing a medicinal preparation designated "Neo-Vim" or "Neo-Vem" recommended for use as a tonic, and a cosmetic designated "Hi-Ho Tooth Paste" recommended for use on the teeth and gums. Respondents cause, and have caused, their said preparations, when sold, to be transported from their aforesaid place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing and which are likely to induce directly or indirectly the purchase of their said products 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 United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

A good tonic, to keep the system in good condition, may be just the thing to keep you well. Now, Neo-Vim is a tonic that is designed to aid in increasing appetite, to relieve that stuffiness after meals, to help digestion and also to help build red blood.

Are you feeling well right now—full of that pep and energy that is needed around these busy holidays? Perhaps you need a good tonic like Neo-Vim. This tonic is designed to relieve stomach distress, stuffiness after eating, increases appetite, and helps to build good red blood.

Maybe you are not feeling well right now—perhaps you are troubled with indigestion, have no appetite, and feel generally run down. Then—we'd say Neo-Vim will probably be a fine tonic for you because Neo-Vim will tone up

Findings

33 F. T. C.

your system by helping to restore appetite, will increase the flow of gastric juices, and will aid digestion and relieve that stuffy feeling after eating. It is mildly laxative and will help to make red blood, so necessary for good health.

Hi-Ho Tooth Paste * * * is so invigorating, keeps the gums healthy. Don't let dingy, discolored teeth or bad breath chase away your friends. Have a smile that your friends will envy by using Hi-Ho Tooth Paste regularly.

You might just add a little more to your brush and massage your gums too, it is certainly healthy and helps the gums stay firm, and once you have firm gums, your teeth are going to shine out like studded diamonds.

Hi-Ho toothpaste * * * has such a refreshing flavor that it sweetens the breath, so that you never need worry about offending.

PAR. 3. Through the use of the foregoing representations, and other representations similar thereto not specifically set forth herein, the respondents represent and have represented, directly or through inference, that their medicinal preparation Neo-Vim or Neo-Vem is a competent and effective tonic which supplies the user with increased energy and vitality and increases the appetite; that it serves to increase the quantity of blood in the body and improves the quality of the blood; that it will increase the flow of gastric juices and otherwise aid digestion; that it is a competent and effective treatment for indigestion.

Respondents also represent in the manner aforesaid that their product Hi-Ho Tooth Paste possesses unusual and superior qualities for brightening the teeth; that it keeps the gums healthy and adds firmness to the gums; that said tooth paste will remove all stain, film and discoloration from the teeth irrespective of the cause thereof; and will alter the natural or original color of tooth enamel and make any teeth white and sparkling; that it prevents impure breath and offensive breath odors.

PAR. 4. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, deceptive, and untrue and constitute false advertisements. In truth and in fact respondents' product Neo-Vim or NeoVem is not a competent or effective tonic. It is wholly incapable of supplying the user with increased energy or vitality. It will not serve to increase the appetite. It will not increase the quantity of blood in the body nor will it improve the quality of the blood. It will not increase the flow of the gastric juices nor will it otherwise aid digestion. It is not a competent or effective treatment for indigestion. In truth and in fact respondents' preparation has no therapeutic value except as an ordinary laxative.

Respondents' product, Hi-Ho Tooth Paste, is not a competent or effective agency for brightening the teeth except insofar as its use as an ordinary cleanser of the teeth will effect such result. Said tooth

254

Order

paste will not remove stain, film, or discoloration, except those of a surface character, from the teeth. It will not serve to keep the gums healthy or add firmness to the gums. It will not prevent impure breath or offensive odors. In truth and in fact, said product serves no purpose other than as an ordinary dentifrice for the cleaning of the teeth.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their preparations, disseminated as aforesaid, 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 said advertisements are true, and induces a portion of the purchasing public because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' preparations.

CONCLUSION

The aforesaid acts and practices of the respondents 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 amended complaint of the Commission and the answers of the respondents, in which answers respondents admit all material allegations of fact set forth in said amended complaint and state that they waive all intervening procedure and further hearings as to the said facts, testimony, and other evidence before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, with reference to the extent of participation of the respondent, Carl G. Rossel, in the acts and practices charged in the amended complaint, the report of the trial examiner upon the evidence and brief in support of the amended complaint 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, Neo-Vim Co., a corporation, and its officers, agents, representatives, and employees, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individuals, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of

Order

33 F. T. C.

their medicinal preparation designated "Neo-Vim" or "Neo-Vem," or their cosmetic preparation designated "Hi-Ho Tooth Paste," 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, directly or through inference,

(a) That respondents' preparation Neo-Vim or Neo-Vem is a tonic; that its use will supply increased energy or vitality; that it will increase the appetite or flow of gastric juices; that it will increase the quantity of the blood or improve the quality of the blood; that said preparation constitutes a competent or effective treatment for indigestion; or that said preparation has any therapeutic value other than that possessed by an ordinary laxative;

(b) That respondent's preparation Hi-Ho Tooth Paste will remove stain, film, or discoloration from the teeth other than those of a surface character; that said preparation will serve to keep gums healthy or add firmness to the gums; that the use of said preparation will prevent impure breath or offensive odors; or that it is a competent or effective agency for brightening the teeth in excess of the results obtained from the use of any ordinary dentifrice.

(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 respondents' preparations Neo-Vim or Neo-Vem or Hi-Ho Tooth Paste, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

It is further ordered, That the 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

PITTSBURGH PLATE GLASS COMPANY, W. D. SNYDER, KARL HANSEN COMPANY, INC., KARL HANSEN, DAVID BERNHARDT PAINT & GLASS COMPANY, INC., FRED DITTMAN, EDMUND W. ULRICH, JOSEPH B. CRASTO, LLOYD B. CRASTO, JOSEPH B. CRASTO GLASS COMPANY, AND H. FLAUMHAFT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4304. Complaint, Sept. 6, 1940—Decision, June 14, 1941

Where a corporation, with principal place of business in Memphis, and two other corporations, with principal and only offices in New Orleans, engaged in selling and distributing glass and conducting a glazing contract business in the States comprising the New Orleans trade area, and three individuals, who were, respectively in charge of New Orleans branch of said first-named corporation, and officers in control of the affairs of the other two, and who determined, as herein concerned, the pricing policies of their respective companies; in competition with one another and with other distributors located in said area and elsewhere, except to the extent that competition was lessened and potential competition curtailed by acts and practices below described, and representing, in their aggregate participation in the distribution of plate, window, safety, rough rolled, wire, art, and structural glass, periodically and during times herein involved, an actual and potential preponderance of such business—

Agreed upon and carried out, from about 1932 through 1938 and from time to time, a common understanding and undertaking among themselves to establish and maintain the prices at which the various types of glass were to be and were sold by them to dealers, to the retail trade and to consumers in aforesaid area; and, with intent of making such understanding and undertaking effective and attempting to require compliance therewith by themselves and competitors—

- (a) Held meetings at various times during period in question at which said understanding and undertaking was discussed, adopted and agreed to;
- (b) From time to time issued and adhered to duplicate and uniform price lists for the sale of the various types of glass above set forth;
- (c) Simultaneously, at times, changed the prices at which they sold said glass to purchasers; and
- (d) From time to time took concerted action to maintain the prices agreed upon; and

Where said corporations and individuals, engaged as above set forth, and a fourth individual, with principal and only place of business in New Orleans, likewise engaged in conducting a glazing contracting business, in the New Orleans trade area, a corporation which succeeded to and carried on aforesaid individual's business, and a fifth individual, likewise engaged in glazing contracting, with principal office and only place of business in New Orleans; securing and seeking to secure glazing contracts within area in question, in competition with similar contractors (whose places of business were