

IN THE MATTER OF  
PHILIP R. PARK, INC.

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

*Docket 3815. Complaint, June 9, 1939—Decision, June 30, 1941*

Where a corporation engaged in the competitive interstate sale and distribution of a dehydrated kelp product in powdered and tablet form designated respectively as "Granular Parkelp" and "Parkelp Tablets"; by advertisements in newspapers and periodicals and by circulars and leaflets, pamphlets and other advertising material and by radio broadcasts—

- (a) Represented that its said preparation was rich in iodine, iron, calcium, and other minerals which were not present in land foods; would correct mineral deficiency, build resistance to mineral deficiency diseases, and furnish food minerals of value in combating goiter, anemia, and other mineral deficiency diseases; and contained iodine, iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, and other minerals in quantities sufficient to have therapeutic value in the treatment and prevention of diseases or conditions resulting from a deficiency in such minerals, listing various diseases claimed to be thus caused; and
- (b) Represented that the average diet of the American people is deficient in the minerals necessary for the proper functioning and health of the human body, and that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in such necessary minerals;

Facts being that the only mineral appearing in its product in an amount that would be of therapeutic value was iodine; therapeutic value thereof was limited to the value of its iodine content, it being beneficial only in conditions resulting from an iodine deficiency and where administration of iodine was indicated; and its said preparation would not correct mineral deficiency, build up resistance to mineral deficiency diseases, or furnish food minerals other than iodine in quantities sufficient to combat such diseases; and, contrary to its claims, all the other minerals listed are present in varying amounts in land foods and their average diet contains as much as health requires;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that such misrepresentations were true and into the purchase of substantial quantities of its product, with result that trade was unfairly diverted from its competitors to it:

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

As respects effect of seller's dehydrated kelp product on mineral deficiencies or its therapeutic value in the treatment or prevention of anemia or other mineral deficiency diseases in human beings, testimony with reference to certain biological tests made upon rats to determine effect of said product in cases of anemia, was of little or no probative value, it appearing that there was no testimony on the relationship between the effect of such tests upon rats as compared with humans, or the relationship between the amounts ingested by the rats under test as compared with the amount

which would be ingested by human beings under the directions for use, and that while test in question was made specifically to determine effect of said product on anemia caused by an iron or copper deficiency, which commonly appears in rats fed exclusively on a diet of milk, anemia in humans caused by such a deficiency in the diet is very rare as compared with other recognized forms of said ailment.

Before *Mr. William C. Reeves* and *Mr. John W. Addison*, trial examiners.

*Mr. Robert Mathis, Jr.* for the Commission.

*Mr. Daniel Dougherty*, 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 Philip R. Park, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to said 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, Philip R. Park, Inc., is a corporation, organized, existing, and doing business under the laws of the State of California, with its principal place of business located at San Pedro, Calif. It is now, and for some time last past has been, engaged in the sale and distribution of a dehydrated kelp product in powdered and tablet form, designated, respectively, as Granular Parkelp and Parkelp Tablets, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from San Pedro, Calif., to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise 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, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products, 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, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false and misleading advertising concerning its said product, by United States mail, by inserting

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the same 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 program 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 is likely to induce, directly or indirectly, the purchase of its said product.

Among and typical of the false statements and representations contained in said advertising, disseminated and caused to be disseminated as aforesaid, are the following:

1. Parkelp is amazingly rich in iodine, iron, calcium and other food minerals which land foods lack.

2. Builds resistance to mineral deficiency diseases.

3. *PALE GIRLS find sea plant better than rouge.* Girls who lack colorful lips and cheeks should know that their blood stream needs more of certain minerals. No amount of rouge can bring beauty that is truly glamorous and sparkling.

The romantic story of kelp—the wonder plant of the sea—reveals that it is a veritable storehouse of iron, iodine and those other minerals needed to attain mineral-rich blood, rosy cheeks, red lips and sparkling eyes.

For an aid to natural beauty, eat kelp—in its pure form—not mixed with anything else.

4. Kelp is today recognized as nature's richest source of essential food minerals for combating goiter, anemia and other mineral deficiency diseases.

5. If you need food iodine, food manganese and calcium, you will find Parkelp an easy, economical way to add these food minerals to your diet.

6. It is interesting to know that lack of food minerals in such land-grown vegetables as lettuce, celery, asparagus, spinach, etc., which form a part of our daily diet, often results in deficiency conditions of the body. You can add these important minerals and vitamins to your diet in an easy and economical way. Try Parkelp, a pure, deep sea kelp product that brings you food minerals from the sea.

7. There is a new and pleasant way of correcting this mineral and vitamin deficiency by using Parkelp—a pure deep-sea kelp product.

8. Kelp—a natural sea plant that is a source of important food minerals.

9. Many of our land-grown vegetables are lacking in food minerals and Parkelp will help you restore those minerals to your diet.

10. Those of you who feel that you need more food iodine, food iron and other minerals in your diet, you will want to try Parkelp—a pure deep-sea kelp product that is amazingly rich in food minerals which many of our land foods lack.

PAR. 3. The respondent, through the use of the aforesaid representations and others not herein detailed, represents that the diet of the American people is deficient in the minerals necessary for the proper functioning and proper health of the human body; that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in these necessary minerals; that by the use of respondent's product, as above

described, the deficiency in iodine, iron, calcium, manganese and other minerals will be supplied; that the use of respondent's product will also correct the alleged vitamin deficiency of the human body; that it will prevent and relieve anemia; and that the use of the product is of great therapeutic value to all who will take it.

PAR. 4. In truth and in fact the statements and representations of respondent hereinabove set out with respect to its product are false and misleading in the following respects: The only one of the minerals appearing in said product in an amount that would be of therapeutic value to anyone needing the minerals is iodine. The amount of minerals other than iodine contained in respondent's product is not sufficient to produce the results claimed in respondent's advertising. The diet of the American people is not deficient in the minerals mentioned in respondent's advertising, nor are the vegetables therein referred to deficient in such minerals. Respondent's product will not prevent and relieve anemia. Said product is refractory to digestion and the minerals therein contained are not made available for assimilation. Said product will not produce the general beneficial effects claimed by respondent.

PAR. 5. There are among the competitors of respondent many other corporations and individuals and firms that manufacture, sell, and distribute products and preparations which contain some or all of the minerals contained in respondent's product, or other preparations designed for similar uses, in commerce, as hereinabove set out, that do not misrepresent the therapeutic value or efficiency of their products.

PAR. 6. The use by respondent in its advertising matter and otherwise of the representations set forth in paragraph 2 hereof had, and has, a capacity and tendency to, and did, and does, deceive and mislead prospective purchasers and purchasers of its product into the belief that such representations are true.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been, and is, induced to purchase said product Parkelp from respondent, and thereby trade has been, and is, unfairly diverted to respondent from competitors named in paragraphs 1 and 5 hereof. As a result 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. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 9, 1939, issued and subsequently served its complaint on the respondent, Philip R. Park, Inc., 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 Robert Mathis, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Daniel Dougherty, attorney for the respondent, before trial examiners 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, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, 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. Respondent Philip R. Park, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its principal place of business located at San Pedro, Calif. It is now and for some time last past has been engaged in the sale and distribution of a dehydrated kelp product in powdered and tablet form, designated respectively as "Granular Parkelp" and "Parkelp Tablets" in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from San Pedro, Calif., to purchasers thereof located in the various 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 products in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of like or similar products in com-

merce 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 product by United States mails and by various 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 product. 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, and by circulars, leaflets, pamphlets, and other advertising material and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate are the following:

1. That respondent's preparation "Parkelp" is rich in iodine, iron, calcium, and other minerals which are not present in land foods;

2. That respondent's preparation will correct mineral deficiency, build resistance to mineral deficiency diseases, and furnish food minerals of value in combating goiter, anemia, and other mineral deficiency diseases;

3. That respondent's preparation contains iodine, iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, and other minerals in quantities sufficient to have therapeutic value in the treatment and prevention of diseases or conditions resulting from a deficiency in such minerals;

4. That respondent's preparation has therapeutic value in the treatment or prevention of the following mineral deficiencies and the diseases and conditions which are alleged by the respondent to result therefrom:

- (a) Iodine deficiency, which may cause goiter, skin diseases, low vitality, neuritis, nervousness, overweight, and rickets;

- (b) Iron deficiency, which may cause anemia, headaches, weakness, and asthma;

- (c) Copper deficiency, which may cause anemia;

- (d) Calcium deficiency, which may cause stomach trouble, rickets, and eczema;

- (e) Phosphorus deficiency, which may cause rickets, subnormal growth, and mental exhaustion;

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(f) Sodium deficiency, which may cause stomach trouble, rheumatism, kidney disorders, and bladder disorders;

(g) Potassium deficiency, which may cause acidosis, heart disorders, and constipation;

(h) Magnesium deficiency, which may cause underweight and skin diseases;

(i) Sulphur deficiency, which may cause constipation, blood disorders, and liver disorders;

5. That the diet of the American people is deficient in the minerals necessary for the proper functioning and proper health of the human body and that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in these necessary minerals.

PAR. 3. Respondent's product Parkelp is composed of the following mineral ingredients:

|                 | <i>Percent</i> |                 | <i>Percent</i> |
|-----------------|----------------|-----------------|----------------|
| Iodine.....     | 0.186          | Magnesium ..... | 0.740          |
| Calcium.....    | 1.050          | Manganese ..... | 0.00044        |
| Phosphorus..... | 0.339          | Sodium.....     | 3.98           |
| Iron.....       | 0.037          | Potassium.....  | 11.15          |
| Copper .....    | 0.008          | Chlorine.....   | 13.07          |

The respondent recommends that  $\frac{1}{2}$  to 1 teaspoonful be taken three times daily, preferably before meals, or 3 to 5 tablets of 5 grains each before or with meals if the product is used in tablet form. There is no difference in the constituent ingredients of Parkelp in the powder or tablet form.

PAR. 4. The Commission finds that under conditions of use the only mineral appearing in respondent's product in an amount that would be of therapeutic value is iodine. The therapeutic value of respondent's preparation is limited to the value of its iodine content and is beneficial only in those conditions resulting from an iodine deficiency and where the administration of iodine is indicated. There is not a sufficient amount of iron, copper, calcium, phosphorus, sodium, potassium, magnesium, or sulphur to have any therapeutic value in the treatment of any mineral deficiency or any disease or condition resulting from such mineral deficiency. All of these minerals are present in varying amounts in land foods and the average diet contains a sufficient amount of such minerals as are necessary for the proper functioning and health of the human body. Respondent's preparation will not correct mineral deficiency; will not build up resistance to mineral deficiency diseases, and will not furnish food minerals other than iodine in quantities sufficient to be of value in combating mineral deficiency diseases.

PAR. 5. On the subject of the therapeutic value of respondent's preparation Parkelp the respondent introduced in evidence testimony with

reference to certain biological tests made upon rats to determine the effect of respondent's product in cases of anemia. There is no testimony on the relationship between the effect of such tests upon rats as compared with human beings, or the relationship between the amounts ingested by the rats under test as compared with the amount which would be ingested by human beings under the directions for use. Furthermore, the test is made specifically to determine the effect of Parkelp on anemia caused by an iron or copper deficiency which commonly appears in rats fed exclusively on a diet of milk. Anemia in human beings caused by a deficiency of iron or copper in the diet is very rare as compared with other forms of anemia recognized in human beings. Consequently the Commission is of the opinion and finds that the testimony with reference to the biological tests made by the respondent is of little or no probative value in connection with the effect of respondent's preparation on mineral deficiencies or the therapeutic value of its preparation in the treatment or prevention of anemia or other mineral deficiency diseases in human beings.

PAR. 6. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to and does mislead and deceive 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 product. 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 of similar products in commerce among and between the various States of the United States.

#### 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 on the complaint of the Commission, answer of the respondent, testimony and other evidence before trial examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto and briefs filed herein and the Commission having made its findings as to the facts and its

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conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That respondent Philip R. Park, 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 their products "Granular Parkelp" or "Parkelp Tablets," or any other product of substantially similar composition 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 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 has any therapeutic value in excess of that afforded by the iodine content thereof;

(b) That respondent's preparation contains iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, or other minerals in quantities sufficient to have therapeutic value in the treatment or prevention of diseases or conditions resulting from a deficiency in such minerals or that it will build resistance to mineral deficiency diseases or furnish food minerals other than iodine in quantities sufficient to be of value in combating mineral deficiency diseases;

(c) That respondent's preparation contains minerals which are not present in land foods or that the average diet is deficient in the minerals necessary for proper functioning and health of the human body.

*It is further ordered*, That the respondent shall, within 60 days from 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  
JOHN H. OESTERHAUS, TRADING AS FARMERS VACCINE  
& SUPPLY COMPANY

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

*Docket 4137. Complaint, May 21, 1940—Decision, June 30, 1941*

Where an individual engaged in competitive interstate sale and distribution of his "Abortion Vaccine" to render cattle immune to Bang's Disease; by means of advertisements disseminated through the mails and numerous newspapers and periodicals of general circulation, and by circulars, pamphlets, and other advertising literature—

(a) Represented, directly or by implication, that by the injection of his vaccine into each animal of a herd of cattle the entire herd and each treated animal was rendered immune to Bang's Disease, that these results might be obtained in all cases regardless of the age of the animal and of whether it was infected with said disease at the time of treatment, that the use of said preparation gave lasting protection and that animals treated therewith, although later exposed, would not become infected, and that a substantial degree of protection was afforded within 2 weeks after treatment was administered;

The facts being that his said preparation, in common with practically all others on the market for treatment of disease in question, was made of "Strain 19," used generally by veterinarians and stockmen for prevention of such disease; the value and effectiveness of the vaccine were limited chiefly to cases of calves of from 4 to 8 months of age, the treatment not being generally recognized as effective in the case of mature cattle and being possibly harmful, and being also ineffective as to cattle already infected; immunity afforded was not in all cases permanent and was lost by a substantial percentage of animals after a certain period; and no substantial degree of protection was usually afforded within 2 weeks after treatment; and said individual, for a substantial period of time, made no change in his advertising material—to certain of which, however, he attached advisory notice—to comply with the regulation of the Department of Agriculture of May 26, 1938, requiring that such vaccines should be recommended only for treatment of calves from 4 to 8 months of age;

(b) Represented that abortion would be prevented in all females treated with the vaccine and that such females would carry their calves for the full period, and might safely be bred at any time after treatment; and

(c) Represented that he guaranteed that a calf would be born to each breeding cow treated with the vaccine;

The facts being that the fact that a cow had received the treatment did not necessarily mean that abortion would be prevented, and that a period of 2 or 3 months should be allowed to elapse before such animals were bred, since time was needed to develop immunity, and in some cases there is a virulent reaction from the treatment which might produce the disease; and the only guaranty made in fact by said individual was that the purchase price of the vaccine would be refunded in cases where a calf was not born;