

Complaint

33 F. T. C.

IN THE MATTER OF
HY-PHEN CORPORATION

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

Docket 4418. Complaint, Dec. 14, 1940—Decision, June 30, 1941

Where a corporation engaged in the interstate sale and distribution of its "Hy-Phen" medicinal preparation; in advertisements in newspapers, by radio continuities, and other advertising media, directly or by implication;

Represented that its said preparation would prevent colds and was a cure or remedy therefor; and was a competent and effective treatment for various ailments and conditions including toothache, earache, neuralgia, twitching nerves, after-extraction pains, aching muscles, rheumatic pains, and women's periodic pains, which would relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation; and that it was unqualifiedly safe for use;

Facts being that the therapeutic properties of its said preparation were limited to those of an analgesic, affording only temporary relief from painful symptoms and having no curative action upon the underlying factors causing pain; ingredients in said preparation were similar to those found in many other like preparations, and it had no special properties which would permit it to relieve pain more quickly or for a longer time than many other such preparations; its effectiveness in the treatment of the conditions listed was limited to furnishing temporary relief from their painful symptoms, it had no therapeutic value in treatment of such conditions as migraine headaches, headaches due to infection, pain caused by abscessed tooth, and others, and use thereof was not entirely free from danger, due to its drug content;

With result of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into the purchase of substantial quantities of its said product:

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

Mr. John M. Russell for the Commission.

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 Hy-Phen Corporation, a corporation (successor to Bradley's Laboratory, Inc., 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. Respondent, Hy-Phen Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business at Matoaka, W. Va.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal preparation described as Hy-Phen intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its said place of business in the State of West Virginia to purchasers 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. 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 product 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 product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product 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, by radio continuities, and other advertising literature, are the following:

Thousands of people have found that they can avoid colds the year around by using Hy-Phen pain and cold tablets.

Nothing else seems to stop a cold like Hy-Phen.

* * * stop toothache and after extraction pain * * * quickly and pleasantly by taking one or two Hy-Phen tablets.

Neuralgia? twitching nerves? Stop them quickly and for a longer period with Hy-Phen.

Hy-Phen for simple headache, toothache, earache, head colds, neuralgic pain and aching muscles. * * * relieves pain quicker and longer.

TWO HY-PHEN TABLETS * * * will relieve that headache or cold almost immediately * * * will help ward off headaches * * *.

HYPHEN * * * "Safety First" * * * effective in relieving pain * * * Women everywhere have found they can always rely on Hyphen tablets. Doctors, lawyers, dentists, miners, all find Hyphen tablets indispensable in easing pain.

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Hyphen tablets will quickly and safely relieve you.

Hy-Phen does not contain any dangerous or habit-forming drugs; may we ask that you safeguard your health and be insured against pain at all times by keeping a package of Hyphen handy.

For quickest relief simple Headaches, Cold, Neuralgia, Lumbago, Rheumatic Pains and Women's Periodic Pains.

Hy-Phen being a tablet, reaches the point of absorption before dissolving giving you the full effect of its medicines. That is why Hy-Phen gives you quicker and long-lasting relief.

Bradley's Lab., Matoaka, West Virginia, * * * HY-PHENS FOR HEADACHES!

PAR. 4. Through the use of the statements and representations hereinabove set forth and in statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication: that its said preparation will prevent colds; that it is a cure or remedy for colds; that said preparation is a competent and effective treatment for toothache, earache, neuralgia, twitching nerves, after extraction pains, aching muscles, rheumatic pains, women's periodic pains, and that it will relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation. Respondent further represents that said preparation is unqualifiedly safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The use of said preparation will not prevent colds and the preparation itself does not constitute a cure or remedy for colds. The therapeutic properties of respondent's product are limited to that of an analgesic only affording temporary relief from painful symptoms, and would have no curative action upon the underlying factors that cause pain. The ingredients of this preparation are similar to those found in many other like preparations, and this preparation has no special therapeutic properties which would permit it to relieve the pain more quickly or for a longer period of time than many other preparations on the market. The effectiveness of this preparation in the treatment of colds, toothache, earache, neuralgia, twitching nerves, after extraction pains, and women's periodic pains is limited to furnishing temporary relief to the symptoms of pain in some instances, and it would have no therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains due to abscessed teeth, or pains from pressure on nerves. By reason of the existence of acetophenetidin, caffeine, and hyoscyamus in this preparation, its administration is not entirely free from danger.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as

aforesaid, has had, and now has, the tendency and capacity 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 into the purchase of substantial quantities of respondent's preparation.

PAR. 7. 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 the 14th day of December 1940, issued, and on the 16th day of December 1940, served, its complaint in this proceeding upon the respondent Hy-Phen Corporation, a corporation (successor to Bradley's Laboratory, Inc., a 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Hy-Phen Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business at Matoaka, W. Va.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal preparation, described as Hy-Phen, intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its said place of business in the State of West Virginia to pur-

chasers 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. 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 product 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 product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product 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, by radio continuities, and other advertising media, are the following:

Thousands of people have found that they can avoid colds the year around by using Hy-Phen pain and cold tablets.

Nothing else seems to stop a cold like Hy-Phen.

* * * stop toothache and after extraction pain * * * quickly and pleasantly by taking one or two Hy-Phen tablets.

Neuralgia? twitching nerves? Stop them quickly and for a longer period with Hy-Phen.

Hy-Phen for simple headache, toothache, earache, head colds, neuralgic pain and aching muscles. * * * relieves pain quicker and longer.

TWO HY-PHEN TABLETS * * * will relieve that headache or cold almost immediately * * * will help ward off headaches * * *.

HY-PHEN * * * "Safety First" * * * effective in relieving pain * * *. Women everywhere have found they can always rely on Hyphen tablets. Doctors, lawyers, dentists, miners, all find Hyphen tablets indispensable in easing pain.

Hyphen tablets will quickly and safely relieve you.

Hy-Phen does not contain any dangerous or habit-forming drugs; may we ask that you safeguard your health and be insured against pain at all times by keeping a package of Hyphen handy.

For quickest relief simple Headaches, Cold, Neuralgia, Lumbago, Rheumatic Pains and Women's Periodic Pains.

Hy-Phen being a tablet, reaches the point of absorption before dissolving giving you the full effect of its medicines. That is why Hy-Phen gives you quicker and long-lasting relief.

Bradley's Lab., Matoaka, West Virginia, * * * HY-PHENS FOR HEADACHES!

PAR. 4. Through the use of the statements and representations hereinabove set forth and in statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication: that its said preparation will prevent colds; that it is a cure or remedy for colds; that said preparation is a competent and effective treatment for toothache, earache, neuralgia, twitching nerves, after extraction pains, aching muscles, rheumatic pains, women's periodic pains, and that it will relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation. Respondent further represents that said preparation is unqualifiedly safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The use of said preparation will not prevent colds and the preparation itself does not constitute a cure or remedy for colds. The therapeutic properties of respondent's preparation are limited to that of an analgesic only affording temporary relief from painful symptoms, and said preparation has no curative action upon the underlying factors that cause pain. The ingredients of respondent's preparation are similar to those found in many other like preparations, and said preparation has no special therapeutic properties which would permit it to relieve pain more quickly or for a longer period of time than many other such preparations on the market. The effectiveness of respondent's preparation in the treatment of colds, toothache, earache, neuralgia, twitching nerves, after-extraction conditions, and women's periodic conditions is limited to furnishing temporary relief from the painful symptoms of such conditions. Said preparation has no therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains caused by abscessed teeth, or pressure on nerves. The use of said preparation is not entirely free from danger due to the fact that it contains acetophenetidin, caffeine, and hyoscyamus.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, the tendency and capacity 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 into the purchase of substantial quantities of respondent's preparation.

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 and the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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 Hy-Phen corporation, 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 its preparation designated Hy-Phen, or any 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 advertisements (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference:

That the use of said preparation will prevent colds; that it is a cure or remedy for colds; that it has any therapeutic properties other than an analgesic affording temporary relief from painful symptoms, or that it will have any curative action upon the underlying factors that cause pain; that it contains any ingredients or possesses any special therapeutic properties which cause it to relieve such painful symptoms more quickly or for a longer period of time than many other preparations on the market; that the extent of its effectiveness in the treatment of colds, toothaches, earaches, after-extraction conditions, and women's periodic conditions is any more than to furnish temporary relief from the painful symptoms thereof; that it has any therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains caused by abscessed teeth or by pressure on nerves; or that its use is entirely free from danger.

2. Disseminating or causing to be disseminated any advertisements by any means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation,

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which advertisements contain 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.

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IN THE MATTER OF

P. D. MEADORS AND M. M. MEADORS, TRADING AS
MEADORS MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4473. Complaint, Mar 21, 1941—Decision, June 30, 1941*

Where two individuals engaged in the manufacture and in the competitive interstate sale and distribution of candy and nut products, including certain assortments, which were so packed and assembled as to involve the use of games of chance, gift enterprise or lottery schemes when sold and distributed to consumers, a typical assortment consisting of (a) 150 assorted pink or white candy-covered gum balls concealed in a hollow cardboard container for sale under a plan by which purchasers of balls, at 1 cent each, who punched the white balls received that gum only, while those punching a pink ball received in addition a 5-cent candy bar; and (b) 32 packages of peanuts packed in a carton bearing a label reading "* * * Prize in Every Package. A Silver Dime in One * * *," under which plan the facts as to whether a purchaser received nothing but a package of peanuts and a prize of insignificant value, or a package with a 10-cent prize included therein, were determined wholly by lot or chance;

Sold such assortments to wholesalers and jobbers, and, directly or indirectly to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, involving game of chance to procure candy at less than its regular retail price, and package of nuts, with money in addition, contrary to the established public policy of the United States Government, and in competition with many who, unwilling to use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by their said sales plans and the element of chance involved therein and were thereby induced to buy and sell their products in preference to those of their said competitors, and with tendency and capacity to divert trade in commerce unfairly from such competitors to them:

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 acts and practices therein.

Mr. J. W. Brookfield, Jr., for the Commission.

Blythe & Bonham, of Greenville, S. Car., for respondents.

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 P. D. Meadors and M. M. Meadors, individually and trading as Meadors Manufacturing Co., hereinafter referred to as respondents, have violated the