

IN THE MATTER OF

WILLIAM CLARENCE OHLENDORF, TRADING AS W. C. OHLENDORF, CLARENCE OHLENDORF, C. OHLENDORF, AND DR. OHLENDORF

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

Docket 4079. Complaint, Apr. 3, 1940—Decision, Aug. 19, 1941

Where practicing physician, engaged in interstate sale and distribution of his "Dr. Ohlendorf's Tonic," which he compounded from a formula originated by his father, also a physician; by means of advertisements in periodicals of general circulation and circulars sent through the mails, directly or by implication—

Represented that his said preparation constituted a cure or remedy and a competent and effective treatment for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels, and that it would tone up the nerves and acted as a diuretic; the facts being ferric chloride, only active ingredient of the product in question, while having some value as an iron tonic and treatment in cases of anemia due to deficiency of iron in the blood, possesses no therapeutic value in treatment of ailments and disorders named, and is not capable of acting as a diuretic;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and to cause it, as a result of such belief, to purchase substantial quantities of his said product:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Joseph C. Fehr 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 William Clarence Ohlendorf, an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, 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, William Clarence Ohlendorf, is an individual trading under the names W. C. Ohlendorf, Clarence Ohlen-

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dorf, C. Ohlendorf, and Dr. Ohlendorf, having his principal place of business located at 1924 Blue Island Avenue in the city of Chicago, in the State of Illinois. He is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as DR. OHLENDORF'S TONIC. Respondent causes said preparation when sold to be shipped from Chicago, Ill., to the purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation 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 his business, as aforesaid, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act.

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

If you are Weak, Nervous, Run-Down or suffer from Sluggish Kidneys, Irritable Bladder or Weak Nerves, Backache, Rheumatism, Neuritis, Diabetes, Catarrh of Bladder and Bowels, Burning, Night Arising, due to anemia and poor circulation I want you to try my successful prescription Dr. Ohlendorf's Tonic under my Special One Cent Offer! This medicine Tones up the Kidneys, Bladder and Nerves, Relieves Rheumatism, Neuritis and Backache, Enriches the Blood and Peps up the system, contains no dope.

KIDNEYS * * * NERVES

Weak, nervous, run-down or suffer from kidney, bladder, nerve dysfunctions, rheumatism, catarrh due to anemia? Try Dr. Ohlendorf's Tonic.

Kidney, Bladder, Nerve Sufferers * * * Send for Dr. Ohlendorf's Tonic. Helps rheumatism, backache, frequency. Enriches Blood. Tones up nerves, diuretic to kidneys.

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PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of the preparation sold and distributed by him, the respondent has represented and does now represent directly and indirectly that his preparation, "Dr. Ohlendorf's Tonic," is a cure or remedy for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels, and that said preparation constitutes a competent and effective treatment for such disorders and ailments. By the same means the respondent further represents that the use of his preparation will be beneficial to those who are weak and anemic, and will tone up the nerves, and that said preparation will act as a diuretic to the kidneys by increasing the secretion and the discharge of urine.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's preparation "Dr. Ohlendorf's Tonic," has no therapeutic value in the treatment of kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, catarrh of the bladder or bowels, and is not a cure or remedy for, or a competent or effective treatment of any such disorder or ailments. Said preparation will have no therapeutic value in the treatment of persons suffering from anemia in excess of improving the condition of the blood in those cases where anemia is caused from a deficiency of iron in the blood. Respondent's preparation will not tone up the nerves and has no therapeutic value as a diuretic, and will not increase the secretion and the discharge of urine.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparation, has had and now has the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public have been, and are, induced to purchase respondent's medicinal preparation containing drugs.

PAR. 6. The aforesaid acts and practices of the 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 April 3, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, William Clarence Ohlendorf, an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition to the allegations of the complaint by the respondent, appearing on his own behalf, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondent not having filed brief and 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, William Clarence Ohlendorf, is an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, and has his principal place of business at 1924 Blue Island Avenue, Chicago, Ill. He is now, and for more than 3 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as Dr. Ohlendorf's Tonic.

Respondent causes his preparation, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and for more than 3 years last past has maintained, a course of trade in his 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 his business, respondent advertises his product in periodicals having a general circulation throughout the United States. He also advertises his product by

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means of circulars, which he sends through the United States mails to purchasers and prospective purchasers of his product. All of respondent's advertisements are for the purpose of inducing and are likely to induce, directly or indirectly, the purchase of his product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations appearing in respondent's advertisements are the following:

If you are Weak, Nervous, Run-Down or suffer from SLUGGISH KIDNEYS, IRRITABLE BLADDER OR WEAK NERVES, Backache, Rheumatism, Neuritis, Diabetes, Catarrh of Bladder and Bowels, Burning, Night Arising, due to anemia and poor blood circulation. I want you to try my successful prescription DR. OHLENDORF'S TONIC under my Special ONE CENT OFFER! This medicine TONES up the Kidneys, Bladder and Nerves. RELIEVES Rheumatism, Neuritis and Backache, ENRICHES the Blood and PEPs up the system. Contains No Dope.

KIDNEYS * * * NERVES.

Weak, Nervous, Run-down or suffer from Kidney, Bladder, Nerve, Dysfunction, Rheumatism, Catarrh, due to Anemia? Try Dr. Ohlendorf's Tonic.

Kidney, Bladder, Nerve Sufferers send * * * for Dr. Ohlendorf's Tonic. Helps Rheumatism, Backache, Frequency. Enriches Blood. Tones up Nerves. Diuretic to Kidneys.

PAR. 3. Through the use of these statements and representations, and of others similar thereto but which are not specifically set out herein, the respondent represents and has represented, directly, or by implication, that his preparation, Dr. Ohlendorf's Tonic, constitutes a cure or remedy and a competent and effective treatment for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels; that it will tone up the nerves; and that it acts as a diuretic.

PAR. 4. Respondent is a licensed and practicing physician. He compounds or manufactures his preparation himself, using a formula originated by his father, who is also a physician, although no longer active in the practice. Respondent has been selling the preparation since 1928. The formula of the preparation is as follows:

Tincture ferric chloride	-----2½ drams
Oil of wintergreen	-----3 minims
Water	-----q. s. to make 4 ounces

The directions for the use of the preparation are that one-half to one teaspoonful shall be taken in a glass of hot water after meals. A 4-ounce bottle of the preparation is supposed to contain 45 doses or a 15-day supply.

PAR. 5. The only active ingredient in respondent's preparation is the ferric chloride. The oil of wintergreen is added merely for the purpose of supplying flavor and color. To support his claim for the therapeutic value of his preparation, respondent relies principally upon a scientific work published about 1795, which stressed the im-

portance of ferric chloride, or iron, to the human system and attributed to it unusual therapeutic value. Respondent insists also that he has many times in his own practice prescribed ferric chloride with favorable results. He insists that his preparation is of substantial value as a remedy or treatment for all of the ailments and conditions mentioned in his advertisements. His testimony is corroborated by the testimony of his father.

PAR. 6. The weight of expert testimony in the record shows, however, and the Commission finds, that ferric chloride does not possess the therapeutic value formerly attributed to it. It is still used as a tonic and in certain cases of anemia and it has astringent properties to a slight degree. The consensus of medical opinion is, and the Commission finds, that ferric chloride possesses no therapeutic value in the treatment of kidney or bladder disorders, rheumatism, neuritis, diabetes, or catarrh of the bladder or bowels. It is incapable of acting as a diuretic. While respondent's preparation possesses some therapeutic value as an iron tonic, and as a treatment in cases of anemia due to a deficiency of iron in the blood, it will not tone up the nerves, nor is it of any therapeutic benefit in the treatment of nervous disorders.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to the therapeutic value of his preparation, as set forth in paragraph 3 hereof, are misleading and deceptive and constitute false advertisements.

PAR. 8. The Commission further finds that the use by the respondent of such false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements are true and that respondent's product possesses therapeutic properties and values which it does not in fact possess, and the tendency and capacity to cause such portion of the public, as a result of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer or re-

spondent, testimony and other evidence taken before Arthur F. Thomas, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and brief in support of the allegations of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William Clarence Ohlendorf, individually and trading as W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparation designated "Dr. Ohlendorf's Tonic" or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

- (a) That said preparation constitutes a cure or remedy for, or that it possesses any therapeutic value in the treatment of, kidney disorders, bladder disorders, rheumatism, neuritis, diabetes, or catarrh of the bladder or bowels.

- (b) That said preparation possesses any therapeutic value as a diuretic.

- (c) That said preparation will tone up the nerves, or that it has any therapeutic value in the treatment of nervous disorders.

2. Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

CINCHONA PRODUCTS INSTITUTE, INC.

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

Docket 4398. Complaint, Dec. 3, 1940—Decision, Aug. 19, 1941

Where a corporation, wholly owned subsidiary of two Dutch concerns, controlled by and affiliated with a foreign unknown corporation, engaged in the sale and distribution to United States of quinine, and itself engaged in business of disseminating advertisements to promote domestic sale of such quinine, sold by said foreign corporation to domestic purchasers in substantial competition with others engaged in interstate sale and distribution of medicinal preparations other than drug quinine for use in the treatment of malaria;

In pamphlets, circulars, and other advertising literature disseminated in commerce for the purpose of inducing the purchase of and increasing the demand for and use of quinine in the United States, directly or by implication—

Represented that quinine constitutes a certain cure or remedy for malaria which is in all cases safe for use and is the only treatment for said ailment which is inexpensive and dependable, through such statements, among others, as "QUININE is the only cheap, safe, and certain remedy," and "the only dependable treatment for malaria is quinine";

The facts being that while quinine possesses therapeutic value in the treatment of malaria, it is not effective in all cases nor safe in all cases as it may sometimes cause toxic conditions manifested by skin rashes, ringing in the ears and dizziness; the use of quinine in excessive doses by women in the later stage of pregnancy may precipitate miscarriage; and it is not the only treatment for malaria which is inexpensive and dependable, there being other drugs and medicinal preparations which constitute dependable treatments for malaria and which are also inexpensive;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, with consequence that such public was induced to and did purchase substantial quantities of quinine, sale thereof to purchasers thereof in the United States by such foreign corporation was increased, and trade was thereby diverted unfairly to purchasers in the United States who buy said drug from such unknown corporation, affiliated, as aforesaid, with the two corporate owners of advertising concern here involved:

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.

Mr. Maurice C. Pearce for the Commission.

Mr. Eugene R. Pickrell, of New York City, 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