

Complaint

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.

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Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that Cinchona Products Institute, 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, Cinchona Products Institute, Inc., is a corporation chartered, organized, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Rockefeller Plaza, New York, N. Y. Respondent is a wholly owned subsidiary, and American agent and representative, of the Cinchona Institute of Amsterdam, Holland, a foreign corporation engaged in the sale and distribution in the United States of America and elsewhere of a drug known as quinine.

PAR. 2. Respondent, as the agent of said Cinchona Institute of Amsterdam, Holland, and in furtherance of the business of its said principal, is now and for more than 2 years last past has been engaged in the business of disseminating advertisements, as hereinafter set forth, with respect to its principal's product, which product is intended and recommended by respondent and by said Cinchona Institute of Amsterdam, Holland, for use in the treatment of malaria.

The said Cinchona Institute of Amsterdam, Holland, causes its said product, when sold, to be transported from its place of business in the country of Holland to purchasers thereof located in various States of the United States of America. Said Cinchona Institute of Amsterdam, Holland, maintains and at all times mentioned herein has maintained a course of trade in its said product in commerce between the country of Holland and various States of the United States of America.

PAR. 3. Said Cinchona Institute of Amsterdam, Holland, is now and at all times mentioned herein has been in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution, in commerce between the United States and other countries and between and among various States of the United States, of drugs and medicinal preparations intended for use in the treatment of the same ailment or condition of the human body as that for which the product of said Cinchona Institute of Amsterdam, Holland, is intended.

PAR. 4. In the course and conduct of its business, the respondent, Cinchona Products Institute, Inc., acting for and on behalf of its principal, as aforesaid, has disseminated and is now disseminating

and has caused and is now causing the dissemination of false advertisements concerning 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 said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 and periodicals and by pamphlets, circulars, and other advertising literature, are the following:

QUININE is the only cheap, safe and certain remedy.

* * * the only dependable treatment for malaria is quinine * * *.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein the respondent represents, directly or by implication, that said drug quinine constitutes a certain cure or remedy for malaria; that it is in all cases safe for use; that it is the only treatment for malaria which is inexpensive and dependable.

PAR. 6. The foregoing representations are grossly exaggerated, false and misleading. While the drug quinine possesses therapeutic value in the treatment of malaria, it is not effective in all cases. Said drug is not in all cases safe for use, as it may cause in some cases toxic conditions manifested by skin rashes, ringing in the ears, and dizziness. The use of quinine by women in the latter stages of pregnancy may precipitate miscarriage. Quinine 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 inexpensive.

PAR. 7. The respondent further represents, through the use of the word "Institute" in its corporate name and by other representations disseminated in the manner herein set forth, that it is a nonprofit organization whose purpose is the promotion of learning and research. In truth and in fact, respondent is not such an organization, but is a commercial enterprise whose sole purpose is the promotion of the sale of its principal's product.

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PAR. 8. There are among the competitors of said Cinchona Institute of Amsterdam, Holland, those who do not misrepresent their business status or the therapeutic value of their products.

PAR. 9. The use by the respondent of said false, deceptive, and misleading 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 representations are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of the product of respondent's principal, said Cinchona Institute of Amsterdam, Holland. Thereby trade has been diverted unfairly to said Cinchona Institute of Amsterdam, Holland, from its competitors, and in consequence thereof substantial injury has been done by respondent to competition in commerce between the United States and foreign countries and between and among the various States of the United States.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of the competitors of respondent's said principal, Cinchona Institute of Amsterdam, Holland, 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 the 3rd day of December 1940, issued and thereafter served its complaint in this proceeding upon the said respondent, Cinchona Products Institute, 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. On December 21, 1940, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Eugene R. Pickrell, attorney for respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its

conclusion based thereon (subject to an unexercised reservation with respect to the filing of briefs and oral argument) and, further, that the filing of a report upon the evidence by the trial examiner was expressly waived. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cinchona Products Institute, Inc., is a corporation chartered, organized, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Rockefeller Plaza, New York, N. Y. Respondent is a wholly owned subsidiary of Naamlooze Vermootschap Serband Veem, Amsterdam, The Netherlands, and Naamlooze Vermootschap Combinatie Voochemische Industrie, Amsterdam, The Netherlands. These two Dutch concerns are controlled by and affiliated with a foreign unknown corporation, engaged in the sale and distribution to the United States of a drug known as quinine.

PAR. 2. Respondent, owned by the two Dutch concerns controlled by and affiliated with a foreign unknown corporation, as above stated, has been engaged in the business of disseminating advertisements as hereinafter set forth, designed to promote the sale and distribution in the United States of a drug known as quinine, which is intended and recommended by respondent for use in the treatment of malaria.

PAR. 3. The drug quinine advertised by the respondent and produced by the unknown affiliated foreign corporation is now, and at all times mentioned herein has been, sold by the said unknown affiliated foreign corporation to purchasers located in the United States of America, which purchasers are in substantial competition with other corporations, and with individuals and firms engaged in the sale and distribution in commerce between and among the various States of the United States of medicinal preparations other than quinine for use in the treatment of malaria.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of and increasing the demand for and use of quinine in the United States, respondent, by means of pamphlets, circulars, and other advertising literature disseminated in commerce among and between the various States of the United States to prospective purchasers, has made representations concerning the

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efficacy of the drug quinine as the only cheap, safe, and certain cure or remedy and the only dependable treatment for malaria. Among and typical of representations made by respondent are the following:

QUININE is the only cheap, safe and certain remedy.

* * * the only dependable treatment for malaria is quinine * * *

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents, directly or by implication, that said drug, quinine, constitutes a certain cure or remedy for malaria; that it is in all cases safe for use; that it is the only treatment for malaria which is inexpensive and dependable.

PAR. 6. The foregoing representations are not true. While the drug, quinine, possesses therapeutic value in the treatment of malaria, it is not effective in all cases. Said drug is not in all cases safe for use as it may cause in some cases toxic conditions manifested by skin rashes, ringing in the ears and dizziness. The use of quinine in excessive doses by women in the latter stages of pregnancy may precipitate miscarriage. Quinine 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.

PAR. 7. The use by the respondent of the misleading representations disseminated as aforesaid has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of the drug quinine. Consequently, the sale to purchasers in the United States of the drug quinine by the said foreign unknown corporation has been increased. Thereby trade has been diverted unfairly to certain corporations, individuals, and firms in the United States who purchase said drug quinine from said foreign unknown corporation which is affiliated with the two corporations which, in turn, own the respondent herein.

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.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between Eugene R. Pickrell, attorney for respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, 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 respondent Cinchona Products Institute, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that the drug quinine, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, constitutes a certain cure or remedy for malaria, that it is in all cases safe for use, or that it is the only treatment for malaria which is inexpensive and dependable.

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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That said 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.

It is further ordered, That paragraph 7 of the complaint be, and the same hereby is, dismissed.

IN THE MATTER OF
**THE GERRARD COMPANY, INC., AND AMERICAN STEEL
& WIRE COMPANY**

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3498. Complaint, July 19, 1938—Decision, Aug. 20, 1941

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—FIELDS OF COMPETITION—IF MODERN AND SPECIALIZED SERVICE FRACTIONAL PART ONLY OF OLDER GENERAL FIELD—WHETHER SUBSTANTIAL COMPETITIVE EFFECT POSSIBLE.

As respects a contention that metal tying machines constitute such a small part of the entire tying field that the practice of the leading tying machine concerns can have no substantial effect upon competition in that field, it is to be noted that most of the devices and methods used for tying purposes—such as rope, twine, gummed tape, etc., tools for metal reinforcing such as pliers, nippers, twisting bars, and hammer and nails, and including also prefabricated containers which either do not need reinforcing or are reinforced in the process of manufacture—are of a more or less primitive or outmoded nature and, in many instances, are being supplanted by modern tying machines, such as those made by the instant concern and others. The very existence of the tying machine industry, in fact, depends upon its ability to convince shippers that the tying machine is an improvement over such other methods. That it has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances, is attested by its steady and rapid growth.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—WHETHER “LINE OF COMMERCE”—TYING MACHINES.

The tying machine industry constitutes a field distinct from the general tying field, and is a line of commerce within the meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—RESTRICTIVE CONDITIONS—IF PRACTICAL EFFECT TO PRECLUDE LESSEES' USE OF SUPPLIES, ETC., OF LESSOR'S COMPETITOR.

While the form of a lease contract used by lessor company in leasing its metal tying machines, providing that no wire other than that supplied by the company should be used in the operation of the machine and that, in the event of a breach of said condition, lessee's right to possess or use a machine should terminate forthwith, did not expressly provide that lessees of its machines and appliances should not use the wire of its competitors, the practical effect of said condition was to preclude such lessees from using competitors' wire.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—LEASE OF MACHINES PERFORMING MODERN SPECIALIZED SERVICE IN OLDER GENERAL FIELD ON CONDITIONS PRECLUDING USE OF COMPETITORS' SUPPLIES.