

Syllabus

IN THE MATTER OF

ROBERT E. OVERELL, TRADING AS COPINOL COMPANY

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

Docket 4431. Complaint, Dec. 21, 1940—Decision, Sept. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Copinol" or "Copinol Nasal Medicine"; by advertisements through the mails and otherwise, including purported testimonials, directly or by implication—

- (a) Represented that his said preparation was a cure and remedy for head colds, catarrh-choked nose or throat, nasal catarrh, and sinus congestion, and constituted a competent and effective treatment for such conditions, and that it would rid the nose and throat of, and protect nose from, germ-laden mucus and instantly clear the head, and would afford relief to congested nasal passages more quickly and for a longer period of time than other similar preparations;

Facts being said product, which was a mild, soothing, and cooling emollient and local constrictor of the small blood vessels, was not a cure or remedy for aforesaid conditions and had no therapeutic value in the treatment thereof in excess of furnishing temporary relief to congested nasal mucous membranes; it would not rid the nose and throat of, or protect nose from, germ-laden mucus, nor clear the head instantly; and had no special properties which would afford quicker or longer relief than other similar preparations; and

- (b) Failed to reveal material facts and that use of said product, as prescribed, might result in injury to health, in that he included neither on the paste-board container of said "Copinol," or in said advertisements, a warning statement to the effect that said preparation, which contained the drug ephedrine alkaloid, should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble except on competent advice, and that its use over a long period of time was likely to produce prolonged nasal constriction so as to cause tissue damage from anoxemia, with secondary inflammatory reaction, or a cautionary statement to the effect that said preparation should be used only as directed on the label, and failed on the cautionary statement in the circular which it enclosed with its said product to which label referred user, to set forth the full danger in use of said preparation over a long period of time, and sufficiently to warn persons suffering from aforesaid diseases that they should not use the product except on competent advice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that his said preparation was harmless and would accomplish the results claimed for it, and of inducing it, because of such belief, to purchase his said "Copinol" medicinal preparation:

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. John W. Carter, Jr., for the Commission.

Complaint

33 F. T. C.

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 Robert E. Overell, individually and trading under the style and firm name of Copinol Co., 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, Robert E. Overell, is an individual trading under the style and firm name of Copinol Co. with his principal place of business located at Seventh and Main Streets, Los Angeles, Calif.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Copinol Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale, and distribution of a medicinal product or preparation designated as "Copinol" and sometimes designated as "Copinol Nasal Medicine," hereinafter referred to as "Copinol," in commerce among and between the various States of the United States.

Respondent causes said medicinal preparation, when sold, to be transported from respondent's place of business in the State of California to the purchasers thereof 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 the said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said preparation by the United States mails and by various other means in commerce, as commerce is defined by 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 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 by 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:

Complaint

TERRIBLE NOSE DISCHARGE EMBARRASSES LADY

Suffers from stuffy head colds, catarrh-choked nose and throat, nasal sinus, helped by Copinol. "I had a bad discharge from my right nostril and used from four to six handkerchiefs daily. It was terrible," writes Mrs. O. E. J., Ocean Beach, California.

"No words can express my embarrassment in company. Copinol relieved me instantly. My head is clear—the crackling is gone." The secret formula of seven scientific ingredients for Copinol Nasal Medicine is now revealed on the package.

SECRET FORMULA FOR NOSE CATARRH REVEALED AT LAST!

Special ingredient retains medication longer in nose—speeds relief in catarrh-choked nasal congestion, shrinks swollen membranes.

Sufferers from stopped up nasal passages—choked by disgusting mucus drippings in nose and throat—have gladly paid more for Copinol Nasal Medicine because it gave longer lasting relief. Now the secret is out. New laws require that Copinol reveal its treasured formula and now the whole world knows that LANOLIN, blended with six other scientific ingredients, is the amazingly effective mediament that insures such lasting relief from stuffy head colds, catarrh-choked nose and throat, nasal catarrh and sinus congestions. * * *

LONGER LASTING MEDICATION FOR YOUR NOSE

Sufferers from nasal congestion can rid nose of clogging mucus and get longer protection by using COPINOL NASAL MEDICINE.

NASAL HYGIENE COPINOL NASAL MEDICINE.

Rid nose of germ laden mucus! Loosen clogging congestion with COPINOL! Long lasting medication! A few drops will aid you in breathing freely again.

PAR. 4. Through the use of the statements and representations hereinabove set forth and in other and similar statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of his said preparation, respondent represents, directly or by implication: That his said preparation is a cure and remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, and that it constitutes a competent and effective treatment for such conditions; that it will rid nose and throat of, and protect nose from, germ laden mucus, and instantly clear the head; and that said preparation will afford relief to congested nasal passages more quickly and for a longer period of time than other preparations.

PAR. 5. The aforesaid representations used and disseminated by respondent as aforesaid, are grossly exaggerated, false and misleading. Respondent's preparation "Copinol" is not a cure or remedy for head colds, nasal catarrh, or sinus congestion, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucus membranes. It will not rid the nose and throat of, or protect the nose from, germ laden mucus. It will not clear the head instantly. This preparation has no special therapeutic properties which will enable it to afford relief

Findings

33 F. T. C.

more quickly or for a longer period of time than many other similar preparations on the market, affording temporary relief to congested nasal passages. It is nothing more than a mild antiseptic emollient and constrictor of the arterioles.

PAR. 6. Respondent's preparation contains the drug ephedrine alkaloid and the use of said preparation may be harmful to those suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble and the use of this preparation over a long period of time is likely to produce such prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction, and may also cause nervousness, restlessness, or sleeplessness.

The advertisements disseminated by the respondent as aforesaid, contain no cautionary statements to the effect that this preparation should not be used by persons having heart trouble, high blood pressure, diabetes, or thyroid trouble or that its frequent or continued use may cause nervousness, restlessness, or sleeplessness, and consequently such advertisements constitute false advertising in that they fail to reveal facts material in the light of the representation contained therein and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation "Copinol."

PAR. 8. 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 the 21st day of December 1940, issued, and on the 26th day of December 1940, served its complaint in this proceeding upon said respondent, Robert E. Overell, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

Findings

On January 15, 1941, the respondent filed his 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 the respondent, Robert E. Overell, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and 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 and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs and without the filing of trial examiner's report upon the evidence. 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, Robert E. Overell, is an individual trading under the style and firm name of Copinol Co. with his principal place of business located at Seventh and Main Streets, Los Angeles, Calif.

PAR. 2. Respondent, acting in his individual capacity, and trading under the style and firm name aforesaid, is now and for more than 1 year last past has been engaged in the advertising, sale, and distribution of a medicinal preparation designated as "Copinol" and sometimes as "Copinol Nasal Medicine." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business as aforesaid, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said medicinal preparation, designated as aforesaid, by United States mails and by various means in commerce, as commerce is defined by the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now

causing the dissemination of, advertisements concerning his said medicinal preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation, designated as aforesaid, in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated by the United States mails and various other means, are the following:

TERRIBLE NOSE DISCHARGE EMBARRASSES LADY

Sufferers from stuffy head colds, catarrh-choked nose and throat, nasal sinus, helped by Copinol. "I had a bad discharge from my right nostril and used from 4 to 6 handkerchiefs daily. It was terrible," writes Mrs. O. E. J., Ocean Beach, California.

"No words can express my embarrassment in company. Copinol relieves me instantly. My head is clear—the crackling is gone."

The secret formula of 7 scientific ingredients for Copinol Nasal Medicine is now revealed on the package.

SECRET FORMULA FOR NOSE CATARRH REVEALED AT LAST!

Special ingredient retains medication longer in nose—speeds relief in catarrh-choked nasal congestion, shrinks swollen membranes.

Sufferers from stopped up nasal passages—choked by disgusting mucus drippings in nose and throat—have gladly paid more for Copinol Nasal Medicine because it gave longer lasting relief. Now the secret is out. New laws require that Copinol reveal its treasured formula and now the whole world knows that LANOLIN blended with six other scientific ingredients is the amazingly effective medication that insures such lasting relief from stuffy head colds, catarrh-choked nose and throat, nasal catarrh and sinus congestion. * * *

LONGER LASTING MEDICATION FOR YOUR NOSE.

Sufferers from nasal congestion can rid nose of clog and mucus and get longer protection by using COPINOL NASAL MEDICINE.

NASAL HYGIENE COPINOL NASAL MEDICINE

Rid nose of germ-laden mucus! Loosen cloggy congestion with COPINOL! A few drops will aid you in breathing freely again.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto but not specifically set out herein, all purporting to be descriptive of the therapeutic properties of the medicinal preparation "Copinol," respondent represents, directly or by implication, that his said preparation is a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, and sinus congestion, and that it constitutes a competent and effective treatment for such conditions that it will rid the nose and throat of, and protect nose from, germ-laden mucus, and instantly clear the head; and that said preparation will afford relief to congested nasal passages more quickly and for a longer period of time than similar preparations.

PAR. 5. The aforesaid representations, used and disseminated by respondent as aforesaid, are grossly exaggerated, false, and misleading.

1291

Findings

Respondent's preparation Copinol, designated as aforesaid, is a mild soothing and cooling emollient and local constrictor of the small blood vessels. It is not a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, and it has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucous membranes. It will not rid the nose and throat of, or protect the nose from, germ-laden mucus. It will not clear the head instantly. This preparation has no special therapeutic properties which will enable it to afford relief more quickly or for a longer period of time than many other similar preparations affording temporary relief to congested nasal passages.

PAR. 6. Respondent's preparation contains the drug ephedrine alkaloid, and the use of this preparation may be harmful to those suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble, and the use of this preparation over a long period of time is likely to produce such prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction and may also cause nervousness, restlessness, or sleeplessness.

PAR. 7. While the label now being used by respondent carries the statement,

See circular for full directions regarding use of Copinol,

it carries neither a warning statement to apprise the reader that there is potential danger in the use of said preparation to persons suffering from heart trouble, high blood pressure, or thyroid disease, and that this preparation should not be used over a long period of time, nor a cautionary statement specifically directing attention to a warning statement to such effect appearing in the accompanying labeling.

The circular now being packaged with respondent's preparation Copinol, contains directions for use and in connection therewith the following statement:

Care should be taken that this preparation is not used so continuously over a long period of time as to cause amassing of oily deposits in nose or lungs. Should be used with caution by persons subject to heart trouble, high blood pressure or thyroid disease. Consult your physicians, particularly regarding children's use.

In the light of the potential danger existing in this product as found in paragraph 6 hereof, the above statement appearing on the circular is inadequate as a warning. It fails to set forth the full danger existing in this preparation if used over a long period of time, and it does not constitute a sufficient warning to persons suffering from heart trouble, high blood pressure, diabetes, or thyroid diseases. This preparation should not be used by persons subject to these diseases except on competent advice.

Order

33 F. T. C.

The printed matter on the pasteboard box in which Copinol is now being packaged by respondent, and the advertisements disseminated by the respondent, as aforesaid, however, contain neither a statement to the effect that said preparation should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble except on competent advice and that its use over a long period of time is likely to produce prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction, nor a cautionary statement to the effect that said preparation should be used only as directed on the label. Such advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

PAR. 8. The use by the respondent of the foregoing statements and representations, and others of a similar nature, disseminated as aforesaid, has had and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and that respondent's preparation is harmless and will accomplish the results claimed for it, as found in paragraph 4 hereof, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparation "Copinol."

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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, assistant 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 findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, 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.

Order

It is ordered, That respondent, Robert E. Overell, individually or trading under the name of Copinol Co., or trading under any other name, 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 "Copinol," or any other 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 that said preparation:

(a) Is a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, or has any therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucous membranes.

(b) Will rid the nose and throat of, or will protect the nose from, germ-laden mucus.

(c) Will instantly clear the head.

(d) Will afford relief to congested nasal passages more quickly and for a longer period of time than similar preparations.

2. Disseminating or causing to be disseminated any advertisements 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 fails to reveal that respondent's medicinal preparation "Copinol" should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble, and that the use of said preparation over a long period of time is likely to produce prolonged nasal constriction resulting in tissue damage from anoxemia, provided, however, that if the label of said preparation contains a warning of the potential dangers in the use of said preparation, as hereinabove set forth, such advertisements need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED ON THE LABEL.

3. 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, or which fails to comply with the requirements set forth in paragraph 2 hereof.

Order

33 F. T. C.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, the manner and form in which he intends to comply; and that, within 60 days after the service upon him of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

BARD-PARKER COMPANY, INC., AND PARKER, WHITE & HEYL, INC.

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

Docket 4478. Complaint, Mar. 28, 1941—Decision, Sept. 15, 1941

Where a corporation and its subsidiary, engaged in interstate sale and distribution of their "Bard-Parker Formaldehyde Germicide," referred to sometimes as "Bard-Parker Germicide," and "B-P Germicide," and of "B-P Instrument Containers," "B-P Sterilizers," and "B-P Instrument Jars" for use therewith; by means of advertisements in pamphlets, circulars, medical journals, letter-heads, and other advertising literature, and through imprinted or raised letterings on the sides of said instrument containers, and through photomicrographs, in pamphlets distributed by them, of the cutting edge of surgical blades, directly and by implication—

Represented that their said "Bard-Parker Formaldehyde Germicide" chemical solution was an efficient, practical and certain sterilization medium for the pre-operative preparation of surgical and dental instruments, and a safe, practical substitute for heat sterilization;

Facts being that, while their said solution had high germicidal and destructive bacteriological properties, it would not destroy all forms of bacteria when used in accordance with the customary sterilization technique; and it was not efficient, practical and certain, or a safe substitute for heat sterilization, unless the instruments remained continuously immersed therein for a period of 18 hours between usage;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it, because of said belief, to purchase their chemical solution:
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. John W. Carter, Jr., for the Commission.

Wiggin & Dana, of New Haven, Conn., 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 Bard-Parker Co., Inc., a corporation, and Parker, White & Heyl, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it