

## Complaint

## IN THE MATTER OF

## BARD-PARKER COMPANY, INC., AND PARKER, WHITE &amp; 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

## Complaint

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in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Bard-Parker Co., Inc., is a corporation with its principal office and place of business located at Danbury, Conn. The respondent, Parker, White & Heyl, Inc., is a corporation 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 Danbury, Conn. It is a subsidiary of the said Bard-Parker Co., Inc., and is engaged primarily as the selling and distributing agent for its principal. The said respondent corporations act in conjunction and cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. Respondent, Parker, White & Heyl, Inc., and respondent, Bard-Parker Co., Inc., acting through its said subsidiary, are now, and for more than 1 year last past, have been engaged in the sale and distribution of the following Bard-Parker products:

(a) A chemical solution designated "Bard-Parker Formaldehyde Germicide," sometimes referred to as "Bard-Parker Germicide" and "B-P Germicide."

(b) Instrument containers designed and intended to be used in connection with the aforesaid "Bard-Parker Formaldehyde Germicide" designated as "B-P Instrument Containers" and "B-P Sterilizers."

(c) Instrument jars designed and intended to be used in connection with the said "Bard-Parker Formaldehyde Germicide" and designated as "B-P Instrument Jars."

Respondents cause their said products, when sold, to be transported from their said place of business in the State of Connecticut to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Connecticut, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the said respondents have disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said chemical solution "Bard-Parker Formaldehyde Germicide" by the United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and the respondents have also disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means for the purpose of inducing, and which are likely to induce,

directly or indirectly, the purchase of their 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, in pamphlets, circulars, advertisements in medical journals, letterheads, by statements imprinted on the various containers and by other advertising literature, are the following:

Studies on the Chemical Sterilization of Surgical Instruments.

The Improved Bard-Parker Formaldehyde Germicide—a highlight in the cavalcade of protective instrument sterilization methods.

Specifically developed as a more efficient, practical and economical sterilizing method that insures preservation of the factory new characteristics of delicate surgical instruments \* \* \*.

Clinically and chemically stable. Does not lose germicidal efficiency or deteriorate with age or evaporation.

Greater and more rapid bactericidal and sporicidal effectiveness.

Destructive Factor Eliminated by the Modern B-P Instrument Sterilization Medium.

Sterilization by boiling is known to produce a progressively destructive action upon keen cutting edges and points.

Bard-Parker Germicide provides effective rust-proof sterilization.

\* \* \* often far exceeds the nominal cost of this invaluable sterilizing medium.

No costly or intricate mechanical equipment is necessary for the satisfactory use of B-P Germicide. No occasion for functional failure due to temporary discontinuation of gas or electric service. No perpetual gas or electricity expense involved.

BARD-PARKER INSTRUMENT CONTAINERS designed to afford added measures of instrument protection during the sterilizing process.

A compact container of heavy duty "PYREX" glass, designed for use with B-P Germicide to facilitate the rust-proof sterilization of fine surgical instruments.

Of high germicidal potency \* \* \* destructive to both vegetative and spore forms of bacteria.

It Sterilizes.

B-P Sterilizer.

Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, all of which purport to be descriptive of the destructive bacteriological properties of their said chemical solution, respondents represent, directly or through implication, that their said chemical solution "Bard-Parker Formaldehyde Germicide" is an efficient, practical and certain sterilization medium for surgical and dental instruments, and that it is a safe substitution for heat sterilization.

PAR. 4. The foregoing statements and representations, and others of similar import not specifically set forth herein, are grossly exaggerated, false, and misleading. While respondents' said preparation has

germicidal properties it will not, when used in accordance with the usual and customary technique ordinarily associated with sterilization, destroy all forms of bacteria. It is not an efficient, practical, and certain sterilization medium and is not a safe substitute for heat sterilization.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, 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, representations and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' chemical solution "Bard-Parker Formaldehyde Germicide."

PAR. 6. The aforesaid acts and practices of the respondents, 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 28th day of March 1941, issued and served its complaint in this proceeding upon Bard-Parker Co., Inc., and Parker, White & Heyl, Inc., charging said respondents with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

On April 15, 1941, the respondents filed their answers 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 respondents and Richard P. Whiteley, assistant chief counsel for the 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 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 and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and without the filing of the 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

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## Findings

and makes its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bard-Parker Co., Inc., is a corporation with its principal office and place of business located at Danbury, Conn.

Respondent, Parker, White & Heyl, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Danbury, Conn. It is a subsidiary of respondent, Bard-Parker Co., Inc., and is engaged primarily as the selling and distributing agent for its principal.

Respondents act in conjunction and cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of the following Bard-Parker products:

(a) A chemical solution designated "Bard-Parker Formaldehyde Germicide," sometimes referred to as "Bard-Parker Germicide" and "B-P Germicide."

(b) Instrument containers designed and intended to be used in connection with the aforesaid "Bard-Parker Formaldehyde Germicide," designated as "B-P Instrument Containers" and "B-P Sterilizers."

(c) Instrument jars designed and intended to be used in connection with the said "Bard-Parker Formaldehyde Germicide" and designated as "B-P Instrument Jars."

Respondents cause their said products, when sold, to be transported from their place of business in the State of Connecticut and from their place of business in the State of Pennsylvania, to the purchasers thereof at their respective points of location in the various States of the United States other than Connecticut and Pennsylvania, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3 In the course and conduct of their aforesaid business the said respondents have disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said chemical solution "Bard-Parker Formaldehyde Germicide" by the United States mails and by various means in commerce as commerce is defined in the Federal Trade

Commission Act; and the respondents have also disseminated, and are now disseminating, and have caused and are now causing the disseminating of, false advertisements concerning their said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated by respondents, as hereinabove set forth, by the United States mails, in pamphlets, circulars, advertisements in medical journals and periodicals, letter-heads, and by other advertising literature, are the following:

1. Prior to the year 1939, as shown by Commission's exhibits 1 to 10, inclusive:

Studies on the Chemical Sterilization of Surgical Instruments.

The Improved Bard-Parker Formaldehyde Germicide—a highlight in the cavalcade of protective instrument sterilization methods.

Specifically developed as a more efficient, practical and economical sterilization method that insures preservation of the factory new characteristics of delicate surgical instruments \* \* \*.

Destructive Factor Eliminated by the Modern B-P Instrument Sterilization Medium.

Bard-Parker Germicide provides effective rust-proof sterilization.

\* \* \* often far exceeds the nominal cost of this invaluable sterilizing medium.

BARD-PARKER INSTRUMENT CONTAINERS designed to afford added measures of instrument protection during the sterilizing process.

A compact container of heavy duty "PYREX" glass, designed for use with B-P Germicide to facilitate the rust-proof sterilization of fine surgical instruments.

Of high germicidal potency \* \* \* destructive to both vegetative and spore forms of bacteria.

It Sterilizes.

B-P Sterilizer.

2. Subsequent to the year 1939, as shown by respondents' exhibits Nos. A, B, C, and D:

Studies on the Chemical Sterilization of Surgical Instruments.

THE IMPROVED BARD-PARKER FORMALDEHYDE GERMICIDE

A Highlight in The Cavalcade of *Protective Methods* For the Preoperative Preparation of Instruments.

Specifically developed as a more efficient, practical and economical disinfecting medium, capable of prolonging the factory-new characteristics of delicate surgical instruments—thus serving to safeguard the surgeon's or hospital's instrument investment.

## Findings

**DESTRUCTIVE FACTORS ELIMINATED BY THE MODERN B. P. INSTRUMENT-DISINFECTING MEDIUM.**

Sterilization by boiling is known to produce a progressively destructive action upon keen cutting edges and points. The intense heat of autoclaving and boiling in oil jeopardize the temper of steel—the oil leaving a film which must be rinsed or wiped off. Most available chemical solutions of sufficiently high germicidal potency, such as formaldehyde U. S. P. carbolic acid, mercuric chloride, etc., exert a corrosive action on metal.

**BARD-PARKER FORMALDEHYDE GERMICIDE PROVIDES EFFECTIVE RUSTPROOF PREPARATION OF INSTRUMENTS.**

The solution will not rust, corrode or otherwise damage steel instruments, glass, or heat treated rubber, and is nondestructive to the keen cutting edges of B-P knives and scissors; the lumens and points of hypodermic and suture needles; glass syringes and suture tubes \* \* \* throughout the disinfecting process. It preserves the temper of steel thus prolonging the useful life of instruments.

PAR. 5. In like manner and means in commerce, and for the same purpose, as is set forth in paragraph 3 hereof, respondents have also disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements by the use of:

1. Imprinted or raised lettering on the sides of the Bard-Parker Instrument Containers, as illustrated in Commission's exhibits 1 to 9, inclusive, and in respondents' exhibits A and B, respectively, such as

**B-P Sterilizer,**

and

2. Photomicrographs of the cutting edge of surgical blades appearing in pamphlets distributed by respondents, as is shown by Commission's exhibit 1, 2, 3, and 9, respectively, and by respondent's exhibits A and B, respectively.

The photomicrographs are designated

- (a) Edge of steel blade before sterilization;
- (b) Edge of steel blade after boiling in water for five minutes, and
- (c) Edge of steel blade after thirty-six hours in Bard-Parker Germicide, respectively.

and are arranged in sequence so as to demonstrate the nondestructive action of the aforesaid chemical solution on the cutting edge of surgical blades, as compared with the destructive action of sterilization by boiling.

PAR. 6. Through the use of the statements and representations contained in said false advertisements, as set forth in paragraphs 4 and 5 hereof, and others of similar import not specifically set-out herein, all disseminated and caused to be disseminated as aforesaid, respondents have represented directly, and are now representing indirectly and through implication and inference, that their said chemical solution "Bard-Parker Formaldehyde Germicide" was and is an efficient, prac-

tical and certain sterilization medium for the preoperative preparation of surgical and dental instruments and that it was and is a safe, practical substitute for heat sterilization.

PAR. 7. The aforesaid statements and representations disseminated as aforesaid, are grossly exaggerated, false, and misleading. While respondents' chemical solution, "Bard-Parker Formaldehyde Germicide," has high germicidal and destructive bacteriological properties, it will not, in the light of present scientific knowledge, when used in accordance with the usual and customary technique ordinarily associated with sterilization, destroy all forms of bacteria. It is not an efficient, practical and certain sterilization medium and it is not a safe substitute for heat sterilization unless the instruments, between usage, remain continuously immersed in the said solution for a period of eighteen hours.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had 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, representations and advertisements were and are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' chemical solution "Bard-Parker Formaldehyde Germicide."

#### CONCLUSION

The aforesaid acts and practices of the respondents, 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 respondents, and a stipulation as to the facts entered into between the respondents 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 respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

## Order

*It is ordered*, That respondents, Bard-Parker Co., Inc., a corporation, and Parker, White & Heyl, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the chemical solution "Bard-Parker Formaldehyde Germicide," or any other preparation of substantially similar composition or possessing 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, indirectly, or through inference, that the said chemical solution Bard-Parker Formaldehyde Germicide is a sterilization medium for the preoperative preparation of surgical or dental instruments, or is a substitute for boiling or autoclaving of surgical or dental instruments, unless it is clearly and unequivocally stated in immediate connection with each such representation, in words of equal conspicuousness, that any instrument to be sterilized must remain continuously immersed in said chemical solution for not less than 18 hours.

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 chemical solution, Bard-Parker Formaldehyde Germicide, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

*It is further ordered*, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

RENAUD SALES COMPANY, INC., AND MURRAY W. MORIN,  
IRVING UNTERMAN, AND IRVING LIPSCHITZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3500. Complaint, July 20, 1938—Decision, Sept. 16, 1941*

Where, for a number of years ending in 1934, the perfumes, powders, and allied products of "Societe Anonyme Renaud Paris 1817" of Paris, France, had been sold and distributed in the United States by "Renaud et Cie of America," and said products and its perfumes known as "Sweet Pea," "Gardenia," "Narcisse," "Orchidee," "Ghedma," "Notchenka," and others, all further identified by name "Renaud," "Renaud Paris," or "Renaud Paris 1817," had acquired a reputation as high quality French perfumes with the trade and purchasing public in the United States, the "Sweet Pea" being particularly well and favorably known; and thereafter, a New York corporation and three officers thereof who controlled its business, engaged in competitive interstate sale and distribution of perfumes, powders and other products;

Following the insolvency, in 1934, of said "Renaud et Cie of America," and their purchase at assignee's sale of a substantial part of the stock of said Societe's products, together with the name and good will, and including also large numbers of Renaud bottles, containers, and labels, and, in the case of the perfumes purchased by them, substantial quantities of certain odors and small quantities of others such as "Sweet Pea," amounting to a few gallons only, which perfumes and other products they sold at much lower prices than had previously been obtained for said Societe's products—

- (a) Bottled in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817," perfumes which they manufactured by mixing alcohol with perfume essences and essential oils purchased at the assignee's sale, and, when their supplies of perfumes of certain odors purchased at said sale became exhausted, bottled and sold, in containers bearing such labels, substitutes therefor which were made for them by a New York concern from essences, essential oils, or other products purchased from various sources, of which none were said Societe; and
- (b) Made use, in continuing their sale and distribution of perfumes, including those compounded in the United States of alcohol with essences and essential oils, of containers simulating those previously used in the bottling and sale of products of said Societe, and of labels which bore the words "Renaud Paris" and "Made in France," together with depiction of a Norman crown and a woman's face superimposed thereon, or "Renaud Paris 1817" together with name of the odor "Sweet Pea," or the typical Norman crown with a woman's face superimposed thereon and the name "Renaud," simulating the labels formerly used on the products of said Societe; and made advertising allowances to retailers to assist in defraying the cost of advertisements circulated by the latter such as "Famous