

IN THE MATTER OF

J. D. JACOBS AND P. W. SMITH, TRADING AS ASPIRONAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4574. Complaint, Aug. 22, 1941—Decision, Dec. 9, 1941*

Where two individuals engaged in the interstate sale and distribution of their "Aspironal" medical preparation; in advertisements disseminated through the mails, newspapers and periodicals, and other advertising literature—

- (a) Used the word "Aspironal" as brand name of their product and in their trade name, and represented, directly and by implication, that their said product was a cure or remedy for the common cold and would rid one of the symptoms thereof, and that it contained an effective quantity of aspirin;

Facts being it contained no aspirin and had no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the discomforts arising therefrom, but was a cathartic, use of which by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous; and

- (b) Failed, in said advertisements, to reveal facts material in the light of such representations and with respect to consequences which might result from use of preparation under usual or prescribed conditions, as above indicated;

With effect, through use of such brand or trade name, and false and deceptive statements and representations, of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that the product in question contained aspirin, generally considered useful by the consuming public in giving relief from the common cold, and that such statements, etc., were true, and of inducing it to purchase their said preparation because of such erroneous beliefs:

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

Mr. Jesse D. Kash for the Commission.

Alston, Foster, Moise & Sibley, of Atlanta, Ga., 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 J. D. Jacobs and P. W. Smith, trading as Aspironal Co., hereinafter referred to as respondents, have 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. Respondents, J. D. Jacobs, and P. W. Smith, are individuals trading as Aspironal Co., with their principal place of business at 1632 Candler Building, Atlanta, Ga.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the sale and distribution of the medical preparation designated as "Aspironal."

In the course and conduct of their business respondents cause said medical preparation when sold to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medical 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 their business as aforesaid, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their 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 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, by advertisements in newspapers and periodicals and by other advertising literature are the following:

ASPIRONAL IS QUICK RELIEF FOR A COLD.

ASPIRONAL ROBS A COLD OF ITS MISERY QUICK.

Banishes that chilly, creepy, achey, mean feeling. Quickly checks the running at nose and eyes, makes you comfortable.

* * * Aspironal moves the bowels gently but thoroughly, helping nature to throw off the cold.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents represent directly and by implication that their said preparation is a cure or remedy for the common cold; that it will rid one of the

symptoms of the common cold; and that it contains an effective quantity of aspirin.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation "Aspironal" is not a cure or remedy for the common cold and will not rid one of the symptoms thereof. Said preparation does not contain aspirin and it has no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pains and discomforts arising therefrom.

PAR. 6. The use by the respondents of the brand name "Aspironal" or any other brand name whose phonetics, spelling or other written appearance simulates the word "aspirin" is an unfair and deceptive act or practice in that its use has the capacity and tendency of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that said preparation contains "aspirin" and because of such mistaken belief to purchase said preparation. The preparation "Aspironal" does not contain aspirin. Aspirin is a well known preparation and is favorably received by the consuming public. It is generally considered as a useful preparation in giving relief from the discomforts of the common cold.

PAR. 7. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements under such conditions as are customary or usual.

In truth and in fact, respondents' preparation "Aspironal" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis is dangerous.

PAR. 8. The use by the said respondents as aforesaid 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 mistaken and erroneous 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' preparation.

PAR. 9. The aforesaid acts and practices of the said 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 August 22, 1941, issued and thereafter served its complaint in this proceeding upon the respondents J. D. Jacobs and P. W. Smith, individuals, trading as Aspiromal Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 8, 1941, the respondents filed their 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 respondents and their counsel, Alston, Foster, Moise & Sibley, 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 that the Commission may proceed upon said statement of facts to make 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. Respondents expressly waived 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 and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. D. Jacobs and P. W. Smith, are individuals trading as Aspiromal Co., with their principal place of business at 1632 Candler Building, Atlanta, Ga.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of the medical preparation designated as "Aspiromal."

In the course and conduct of their business respondents cause said medical preparation when sold to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medical preparation in commerce be-

tween and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their 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 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, by advertisements in newspapers and periodicals and by other advertising literature are the following:

ASPIRONAL IS QUICK RELIEF FOR A COLD.

ASPIRONAL ROBS A COLD OF ITS MISERY QUICK.

Banishes that chilly, creepy, achey, mean feeling. Quickly checks the running at nose and eyes, makes you comfortable.

* * * Aspironal moves the bowels gently but thoroughly, helping nature to throw off the cold.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents represent directly and by implication that their said preparation is a cure or remedy for the common cold; that it will rid one of the symptoms of the common cold; and that it contains an effective quantity of aspirin.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation "Aspironal" is not a cure or remedy for the common cold and will not rid one of the symptoms thereof. Said preparation does not contain aspirin and it has no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pains and discomforts arising therefrom.

PAR. 6. The use by the respondents of the brand name "Aspironal" or any other brand name whose phonetics, spelling or other written

appearance simulates the word "aspirin" is an unfair and deceptive act or practice in that its use has the capacity and tendency of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that said preparation contains "aspirin" and because of such mistaken belief to purchase said preparation. The preparation "Aspironal" does not contain aspirin. Aspirin is a well known preparation and is favorably received by the consuming public. It is generally considered as a useful preparation in giving relief from the discomforts of the common cold.

PAR. 7. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact, respondents' preparation "Aspironal" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis is dangerous.

PAR. 8. The use by the said respondents as aforesaid 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 mistaken and erroneous 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' preparation.

CONCLUSION

The Commission finds that the aforesaid acts and practices of the respondents 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 by counsel for respondents herein and counsel for the Commission, which provides, among other things, that without further evidence or other interven-

ing procedure the Commission may issue and serve upon the respondents herein 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. D. Jacobs, and P. W. Smith, trading as Aspironal Co., or under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their preparation now named Aspironal or any other preparation containing the same or similar ingredients, under whatever name sold, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that their said preparation is a cure or remedy for the common cold; that it will rid one of the symptoms of the common cold; that it contains an effective quantity of aspirin; or that it has any therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pain and discomfort arising therefrom; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis; provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED.

2. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement includes as a part of respondents' trade name or as a brand name for respondents' preparation the name "Aspironal" or any other name or word whose phonetics, spelling or appearance simulates, implies, or suggests the word "aspirin."

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 or terms prohibited

310

Order

in paragraphs 1 and 2 hereof, or which fails to comply with the requirements set forth in paragraph 1 hereof with respect to said cautionary statement.

It is further ordered, That 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

NOMIS CORPORATION, ALSO TRADING AS LINGLE ADVERTISING AGENCY; SIMON LEVY; STOKER CORPORATION OF AMERICA, ALSO TRADING AS APROCS ADVERTISING AGENCY; AND CHARLES B. LEVY

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

Docket 4580. Complaint, Aug. 29, 1941—Decision, Dec. 9, 1941

Where two corporations and the principal stockholder in each, formulating, controlling and directing its acts, practices and policies, engaged in the interstate offer and sale of their prefabricated "Nomis Ready-Cut Homes" to purchasers or so-called "distributors"; in pursuance of a scheme to induce individuals to purchase and execute written contracts for the purchase of their said houses and territorial rights for the sale thereof; and incident to which aforesaid individuals respectively made use of names of two pretended advertising agencies as mediums through which to carry out the deceptive acts and practices below set forth; through blind advertisements which they made a practice of running in the classified sections of newspapers in various States—

- (a) Represented and implied that persons replying thereto would have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses, and that they had a large volume of business, facts being they did not make such houses or own or operate a factory making them, and did not have the large volume of business represented, but had contracts with factories equipped to make such houses, which fact they failed to disclose to prospective distributors and customers, in some instances changing price lists prepared for their distributors, after contracts had been signed and following discontinuance of filling orders by factories with which they had agreements;
- (b) Represented and implied that the sum of \$500, mentioned in their ads as capital required to handle a distributorship, was to establish the business and defray necessary expenses during the beginning period, when in fact it was a partial payment on their houses;
- (c) Represented that their houses were shipped complete and met specifications required for financing by lending agencies operating under the Federal Housing Administration Act, when they did not contain heating equipment and wiring and did not meet such specifications;
- (d) Represented that men in their organization were earning large sums of money and, in one instance, as much as \$10,000 in one month, when in fact such persons did not make the large sums represented; their primary purpose in obtaining the execution of contracts was the sale of houses and so-called distributorship contracts were in reality contracts for the sale of houses to so-called distributors; and they failed, in some instances, to comply with contracts' provision regarding refund of down payment on houses; and