

Complaint

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IN THE MATTER OF

MELVIN V. EISENBERG, IRWIN GOLDBERG, HARRY
KROHNER, AND SEYMOUR EISENBERG, TRADING AS
BENTLEY COMPANY, MAIL ORDER DIVISIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4552. Complaint, July 31, 1941—Decision, Dec. 16, 1941*

Where four individuals engaged in interstate sale and distribution of their "Fat-O-No" medicinal preparation; by means of advertisements disseminated through the mails and otherwise—

- (a) Represented, directly and by implication, that their said product was a safe, simple, easy and effective treatment for obesity and an amazing fat-reducing remedy, purity and safety of which were guaranteed by a leading insurance company, and that it was recommended by many physicians; the facts being it was not such a treatment or remedy, or so guaranteed or recommended, but contained the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid and phenolphthalein in quantities sufficient to be harmful to the user;
- (b) Failed to reveal facts material in the light of said representations in that use of the product in question under usual or prescribed conditions, might cause diarrhea and a dependence upon a laxative for evacuation of the bowels, and its use by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, was dangerous; and
- (c) Failed to reveal further material facts in that use of said preparation as aforesaid might result in edema of the lungs, and might also accelerate metabolic processes, resulting in nervousness and irritability, and dangerously increase body temperature and heart action;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such belief, to purchase their said 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. R. P. Bellinger for the Commission.

Mr. Robert H. Rudnick, of Chicago, Ill., 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 Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Company, Mail Order Division, hereinafter referred to as respondents, have violated the provisions of the 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, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg are individuals trading as Bentley Company, Mail Order Division, with their principal place of business located at 900 N. Francisco Avenue, Chicago, Ill. The individual addresses of each of the four respondents are respectively as follows: Melvin V. Eisenberg, 2829 Augusta Boulevard, Chicago, Ill.; Irwin Goldberg, 4811 North Harding Avenue, Chicago, Ill.; Harry Krohner, 4708 North St. Louis Avenue, Chicago, Ill.; Seymour Eisenberg, 2729 East Chestnut Street, Chicago, Ill.

PAR. 2. The respondents are now, and since October 1940, have been, engaged in the sale and distribution of a medicinal preparation designated as "Fat-O-No."

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

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation 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 aforesaid, are the following:

LOSE EXCESS FAT

Try the simple easy method recommended by so many thousands of people during the last 20 years. This amazing reducing remedy is known as FAT-O-NO.

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Reduce quickly and safely without strenuous exercise or starvation diets: Purity and safety guaranteed under a \$10,000.00 bond posted with a leading insurance company. The complete formula printed on every package. Recommended by many doctors.

FAT-O-NO tablets the Bonded and Guaranteed Safe, Easy and Pleasant way for flesh reducing.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly and by implication, that their said preparation designated as "Fat-O-No" is a safe, simple, easy, and effective treatment for obesity, or for the reduction of excess fat; that said preparation is an amazing fat reducing remedy; that its purity and safety is guaranteed by a leading insurance company and that said preparation is recommended by many physicians.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondents' said preparation is not a safe, simple, easy and effective treatment for obesity or for the reduction of excess fat. Said preparation is not an amazing fat reducing remedy. The purity and safety of said preparation is not guaranteed by a leading insurance company and said preparation is not recommended by many physicians.

PAR. 6. 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' said preparation contains the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid, and phenolphthalein in quantities sufficient to be harmful to the user. The use of said preparation may cause diarrhea and a dependence upon a laxative for the evacuation of the bowels. Its use by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous. Further, the use of said preparation may result in a dangerous condition known as edema of the lungs. Furthermore, the use of said preparation may accelerate the metabolism processes of the body resulting in nervousness, and irritability. Its use may also increase the body temperature and the heart action to an extent that is dangerous to health.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading statements and advertisements with respect to their said

preparation, 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 induces a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said preparation.

PAR. 8. 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 July 31, 1941, issued and thereafter served its complaint in this proceeding upon said respondents, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Co., Mail Order Division, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The time within which respondents should have filed answer in this proceeding expired on August 21, 1941, and no answer was filed. 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, Robert H. Rudnick, Esq., 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 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint 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. Respondents Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, are individuals, trading as

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Bentley Company, Mail Order Division, with their principal place of business located at 900 N. Francisco Avenue, Chicago, Ill. The individual addresses of each of the four respondents are, respectively, as follows: Melvin V. Eisenberg, 2849 North Augusta Boulevard, Chicago, Ill.; Irwin Goldberg, 4811 North Harding Avenue, Chicago, Ill.; Harry Krohner, 4708 North St. Louis Avenue, Chicago, Ill.; Seymour Eisenberg, 2729 East Chestnut Street, Chicago, Ill.

PAR. 2. From October 1940 to March 1941 the respondents were engaged in the sale and distribution of a medicinal preparation designated as "Fat-O-No."

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

Respondents maintained, during said period of time, a course of trade in said 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 aforesaid business, the respondents disseminated and caused the dissemination of false advertisements concerning their said preparation by the United States mails and by various other means, in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation; and respondents also disseminated and caused the dissemination of false advertisements concerning their said preparation by various means, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of their said preparation 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 aforesaid, were the following:

LOSE EXCESS FAT

Try the simple easy method recommended by so many thousands of people during the last 20 years. This amazing reducing remedy is known as FAT-O-NO. Reduce quickly and safely without strenuous exercise or starvation diets. Purity and safety guaranteed under a \$10,000.00 bond posted with a leading insurance company. The complete formula printed on every package. Recommended by many doctors. FAT-O-NO tablets the Bonded and Guaranteed Safe, Easy and Pleasant way for flesh reducing.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that their said preparation designated as "Fat-O-No" was a safe, simple, easy, and effective treatment for obesity, or for the reduction of excess fat; that said preparation was an amazing fat-reducing remedy; that its purity and safety were guaranteed by a leading insurance company, and that said preparation was recommended by many physicians.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described, were grossly exaggerated, false, and misleading.

In truth and in fact respondents' said preparation is not a safe, simple, easy and effective treatment for obesity or for the reduction of excess fat. Said preparation is not an amazing fat-reducing remedy. The purity and safety of said preparation is not guaranteed by a leading insurance company, and said preparation is not recommended by many physicians.

PAR. 6. 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' said preparation contains the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid, and phenolphthalein in quantities sufficient to be harmful to the user. The use of said preparation may cause diarrhea and a dependence upon a laxative for the evacuation of the bowels. Its use by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous. Further, the use of said preparation may result in a dangerous condition known as edema of the lungs. Furthermore, the use of said preparation may accelerate the metabolic processes of the body, resulting in nervousness and irritability. Its use may also increase the body temperature and the heart action to an extent that is dangerous to health.

PAR. 7. The use by respondents of the foregoing false, deceptive, and misleading statements and advertisements with respect to their said preparation, disseminated as aforesaid, has had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true, and induced

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a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said preparation.

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 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.

It is ordered, That the respondents, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Co., Mail Order Division, or trading under any other name or names, their representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparation designated as "Fat-O-No," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation is a safe, simple, easy or effective treatment for obesity or for the reduction of excess fat; that said preparation constitutes a competent fat-reducing remedy; that the purity and safety of said preparation are guaranteed by an insurance company; or that many physicians have recommended said preparation.

2. 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 fails to reveal that the use of said preparation may result in edema of the lungs, may cause nervousness and irritability because of acceleration of the metabolic processes of the body, and may increase the body temperature and the heart action to a dangerous extent.

3. 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 fails to reveal that said preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisement need contain only the statement, "Caution, use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect.

4. 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 paragraphs 2 and 3 hereof.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall 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
NEWTON PAPER COMPANY ET AL.

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

Docket 4559. Complaint, Aug. 8, 1941—Decision, Dec. 16, 1941

Where a corporate manufacturer of specialty papers, which had attained and maintained a dominant position approaching monopoly in the manufacture and original interstate sale of "bogus" paper, a cheap flexible product cut by dies into stays of various shapes and sizes for lining handbags and pocket-books; an association of stay die cutters; the executive secretary of said association, in effect its business manager; four corporations, two partners and an individual, engaged in stay die cutting, all organizers and members of said association and participants in the formation of its policies and the unlawful acts and practices below set forth; engaged, excepting said association and secretary thereof, in interstate sale and shipment of such "bogus" paper or converted products thereof, and, prior to 1933, in free and open competition which would have continued but for unlawful acts and practices below set forth—

- (a) Entered into, on or about October 1, 1933, and thereafter continuously carried out an understanding and combination to lessen and restrain competition and trade in the interstate sale and distribution of "bogus" paper, either in its original or converted form, and to monopolize such business in themselves; and

Where said die cutters, pursuant to such understanding and combination—

- (b) Organized aforesaid association to assist them in carrying out the same and, under its auspices, held meetings at which they fixed and established prices, terms, discounts and charges for their products;
- (c) Refused to solicit or sell their products to customers of other members, under penalties prescribed and assessed by said association, and, through said association, allocated among themselves all new and prospective customers;
- (d) Furnished such association with lists of their customers and the name of any customer who was delinquent in his accounts, and refused to sell any customer who had become delinquent with any other member; and
- (e) Restricted, as far as practicable, their purchases of "bogus" paper to aforesaid manufacturer and distributors; and

Where such association and its aforesaid secretary, chief instrumentality in coordinating efforts and unlawful acts and practices in question of the corporations and concerns above referred to; in the pursuit of their objectives—

- (f) Cooperated with said die cutters by holding meetings of members, by circulating prices, discounts, and charges fixed and established by said die cutters, by circulating lists of delinquent customers, by prescribing and assessing penalties for members' violation of said understandings and agreements, and by other acts and practices; and

Where aforesaid manufacturer—