

IN THE MATTER OF

E. R. DAVIS, TRADING UNDER THE NAME OF E. R. DAVIS
PRESCRIPTION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4289. Complaint, Aug. 29, 1940—Decision, Jan. 7, 1942*

Where an individual engaged in interstate sale and distribution of his "Davis Formula No. 7895" medicinal preparation; in advertisements disseminated through the mails and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature, in which he included quotations or purported quotations from testimonials; directly and by implication—

Represented that his said formula was a cure or remedy for asthma or hay fever and a competent and effective treatment therefor, use of which would prevent attacks and recurrence of attacks thereof and relieve the suffering incident thereto;

Facts being said formula or preparation—in the package of which he included a 4-ounce bottle of concentrated Vitamin A containing 30,000 International units per gram, and in which preparation were included potassium iodide and lobelia, sometimes used to relieve temporarily the symptomatic spasms of asthma—was not a cure or remedy for any of the many different types of asthma, which do not all yield to same treatment, and had no therapeutic value in treatment thereof in excess of furnishing temporary relief from its symptomatic paroxysms, nor value in preventing recurrence of attacks of ailments referred to; and, as respects hay fever, did not constitute a cure or remedy therefor or have any substantial therapeutic value in the treatment thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of thereby inducing it to purchase his 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.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. William L. Pencke* for the Commission.

Mr. E. R. Davis, pro se.

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 E. R. Davis, an individual, trading under the name of E. R. Davis Prescription Co., hereinafter referred to as respondent, has 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. Respondent, E. R. Davis, is an individual trading under the name, E. R. Davis Prescription Company, with his principal office and place of business in Bellingham, State of Washington. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation designated as Asthma and Hay Fever Remedy No. 7895, in commerce among and between the various States of the United States. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Washington to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning 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 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, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Don't suffer needlessly with asthma and Hay Fever. The Davis Asthma and Hay Fever Remedy #7895 really works. Hundreds of users throughout Canada and here in Whatcom Co. are its best boosters. Many have written sincere letters of thanks for relief after all other treatments had failed completely. But it is a hundred times easier to prevent Hay Fever than to cure it. * * * It is taken internally and works through the blood, the nerves, the membranes of the nose. The vitamin A contained in the remedy builds up the mucous membrane of the nose so that it does not become so easily irritated. But if you wish to free yourself from the agony of hay fever this summer, remember that you should begin today.

Have you given up all hope of ever finding any relief for asthma? After trying dozens of so-called remedies, many persons have given up hope * * * but the

Complaint

34 F. T. C.

fact stands out that Davis Asthma Remedy #7895 has brought real relief to many who have suffered for 15, 20, and even 30 years.

Thousands of people, after trying hit-and-miss remedies, have come to the conclusion that there is no real cure for asthma or hay fever. That is neither true nor fair! Science is each year making tremendous strides towards the cure and prevention of every disease. One of the greatest steps toward the relief of asthma and hay fever is the discovery of a Canadian druggist * * * the Davis Asthma and Hay fever remedy #7895. Mr. Davis, a graduate of the Ontario college of Pharmacy and Toronto University, compounded this remedy when all known treatments failed to help him. Three days after taking his treatment he was improved, and within three weeks he was entirely cured of asthma.

Adrenalin and Ephedrin users and powder smokers should cut out the use of such rapidly as possible under the use of this medicine. They only relieve.

TASTELESS CONCENTRATE

VITAMIN "A"

100 Times the Strength of Cod Liver Oil

Adults: 2 or 3 drops; children: 1 or 2 drops at meals 3 times a day, on food.

As your cost is only about half of most other remedies, and as asthma, all forms of hay fever, eczema and also sick headaches are now considered members of one family and are in the blood stream, you should continue the remedy for a good while in smaller doses to thoroughly protect yourself. The average case gets relief from the severe spasms after a couple of days.

ASTHMA

Do you really know of a person who got permanent results by injections, inhalations, or smokes? How could they when asthma is the evidence of a constitutional trouble?

"DAVIS' FORMULA NO. 7895"

with a separate supply of "Vitamin A" is for internal use entirely and affects the blood, nerves and mucous membranes. Safe and effective—3 weeks' treatment only.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of the preparation sold and distributed by him, the respondent has represented and does now represent, directly and by inference, that the preparation Asthma and Hay Fever Remedy No. 7895 is a cure or remedy for asthma, hay fever and bronchial asthma and that it constitutes a competent and effective treatment therefor, that the use of said preparation will prevent attacks of asthma and hay fever or the recurrence thereof and will relieve the suffering incident thereto.

PAR. 4. The aforesaid representations and claims, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact, the medicinal

preparation sold and distributed by the respondent is not a cure or remedy for asthma, hay fever and bronchial asthma and does not constitute a competent and effective treatment therefor in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and attacks of hay fever. Said product is of no value in the prevention or treatment of hay fever, respiratory infections or in increasing the resistance of nasal mucous membranes.

PAR. 5. 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.

PAR. 6. 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 August 29 A. D. 1940, issued and subsequently served its complaint on the respondent, E. R. Davis, an individual trading under the name of E. R. Davis Prescription Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by E. R. Davis, respondent, pro se, before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by the respondent or oral argument requested); and the Commission having duly considered the matter 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. Respondent, E. R. Davis, is an individual trading under the name of E. R. Davis Prescription Co., with his principal office and place of business in the city of Bellingham, State of Washington. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of a medicinal preparation designated Davis' Formula No. 7895, in commerce among and between the various States of the United States. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Washington to 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. 2. In the course and conduct of his aforesaid business, the 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 in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his 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 hereinabove set forth, by United States mails, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

ASTHMA AND HAY FEVER

Davis' Formula No. 7895

Davis' Formula No. 7895 was worked out by E. R. Davis, Phm. B., of New Westminster, B. C., Canada.

Mr. Davis is a graduate of the Ontario College of Pharmacy and Toronto University, 1898, and holds diplomas from New York City, Saskatchewan, Alberta and Gold Medalist in B. C. Examinations, 1918.

Mr. Davis says: "In 1917 I contracted a very heavy cold which took about three months to shake off, leaving me with a bronchitis which soon developed into Bronchial Asthma and Spasmodic Asthma. For 16 years I fought this baffling condition, trying every ready made remedy I could find, new chemicals, chiropractors, specialists, herbalists, dieticians, etc., without any worthwhile benefit.

In July, 1933, I got so weak I could neither talk nor work properly, or walk even a couple of blocks for want of breath and wondered whether I could carry on business another day. In despair I decided to test out my conclusions of what an asthma remedy should contain and after carefully working out the proportions of the various ingredients I began its use.

"To my surprise and delight I was much better in three days and in three weeks I seemed completely free from Asthma."

Vancouver nurse says: "6 years ago I contracted bronchial pneumonia and for 4 years spent as much as 3 months in bed continually with asthmatic attacks. 2 years ago I took 3 bottles of "Davis' Formula 7895" and have not had an attack since. I feel fine and am telling others."

Here is a statement from a letter written by Mrs. Nellie La Fave—1225 E. Base Line—San Bernardino, Calif.: "Your Davis formula #7895 has in ten days done wonders for me—I am sixty four years old and thanks to your remedy Davis Formula #7895. I am rapidly regaining my normal good health. I shall keep on telling others of this formula."

Mrs. F. of Stellacoom, Wash., writes: "I have been a very bad case for 21 years. I appear to be entirely free with 2 bottles of your medicine."

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto, not specifically set out herein, respondent has represented, directly and by inference, that his preparation Davis' Formula No. 7895 is a cure or remedy for asthma and hay fever; that it constitutes a competent and effective treatment therefor; and that the use of said preparation will prevent attacks of asthma and hay fever and the recurrence thereof and will relieve the suffering incident thereto.

PAR. 4. The formula for respondent's preparation, Davis' Formula No. 7895, is as follows:

Aqua chloroformi B. P.....	oz..	2
Potassium iodide.....	drs..	10
Elixir aromatic U. S. P.....	oz..	4½
Tincture lobelia U. S. P.....	min..	256
Liquor strychnine Hcl.....	min..	32
Liquor arsenic Hcl.....	min..	48
. in 8-ounce bottle, 64 doses		

In the package in which the Davis' Formula No. 7895 is supplied to purchasers the respondent also includes a ¼-ounce bottle of concentrated vitamin A containing 30,000 International units per gram.

PAR. 5. Asthma is a paroxysmal disease. There are two ingredients in respondent's preparation which are sometimes used in the treatment of asthma for the purpose of loosening the mucous, and temporarily relieving the spasms which are symptomatic of this condition. These ingredients are potassium iodide and lobelia. However, there are many different types of asthma, and all will not yield to the same treatment but require a different type of treatment. Respondent's preparation is not a cure or remedy for any type of asthma and has

Order

34 F. T. C.

no therapeutic value in the treatment of asthma in excess of furnishing temporary relief from the paroxysms which are symptomatic of this condition. While this preparation might, under certain conditions, build up the bodily resistance to some diseases, it has no value in preventing the recurrence of attacks of asthma, and so far as hay fever is concerned, the value of this preparation in the treatment of hay fever is so slight as to be immaterial, and this preparation does not constitute a cure or remedy for hay fever or have any substantial therapeutic value in the treatment thereof.

PAR. 6. 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.

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, answer of the respondent, testimony and other evidence taken before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and brief in support of the complaint filed herein; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, E. R. Davis, an individual trading under the name of E. R. Davis Prescription 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 known as Davis' Formula No. 7895, 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 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,

(a) That respondent's preparation is a cure or remedy for asthma or has any therapeutic value in the treatment thereof, in excess of furnishing temporary relief from the paroxysms of asthma.

(b) That respondent's preparation is a cure or remedy for hay fever, or that it has any substantial therapeutic value in the treatment of such disorder.

(c) That the use of respondent's preparation will prevent attacks of asthma or hay fever, or prevent any recurrence of such attacks.

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 respondent's preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
ARTHUR JACOBSON

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

Docket 4466. Complaint, Feb. 19, 1941—Decision, Jan. 7, 1942

Where an individual engaged in interstate sale and distribution of certain devices and courses of instruction explaining their uses, which were all represented as a treatment for defects of eyesight without resort to glasses, drugs, or surgery, said devices consisting of a so-called "eye tester" and an "eye adjuster," together with various charts, and the course of instruction being made up of printed pamphlets designated "Better Eyesight System" and "Training the Eyes to See Correctly"; by means of advertisements in periodicals, circulars, leaflets, pamphlets, letters, and other advertising literature including quotations or purported quotations from testimonials; directly or by implication—

- (a) Represented that his said system was new and revolutionary, that by means of the "eye tester" a person could quickly and easily test his eyes, and by means of the "eye adjuster" could adjust his eyes and make each eye better able to see alone as well as in harmony with the other eye;
- The facts being that his system was neither new nor revolutionary but was taken with modifications and adaptations from other systems of eye treatment by so-called natural methods; his "eye tester" simply measured the user's visual perception but did not enable the user to diagnose any visual defect or determine its cause; and his "eye adjuster" was no more than a convenient means of shutting off the vision of one eye so as to permit the unaided use of the other; and
- (b) Represented that use of his said system would improve the eyesight, eliminate headaches and nervousness, overcome tired feeling and cause the eyes to become clear and strong, would correct nearsightedness, astigmatism and strabismus and result in perfect eyesight without glasses, and eliminate the need of drugs, glasses, and surgery in the treatment of poor eyesight; and that 90 percent of the physical defects of the eye could be remedied by the use of his devices and courses;
- The facts being that, while there are many causes for defective vision, including errors of refraction, various diseases of the eyes, toxemias, and inherited imperfections in the visual organs, his devices, courses and treatment were the same, regardless of the causes or nature of the visual defect; headaches and nervousness may be due to numerous causes other than eye strain; such physical defects as nearsightedness and astigmatism are not subject to correction by said devices or courses; proper treatment when exercise is prescribed in cases of strabismus requires adaptation to the particular case and use of his devices and courses, while possibly in some instances tending to correct muscular imbalance, will not result in perfect eyesight, eliminate need of drugs, glasses and surgery in the treatment of poor eyesight or correct 90 percent of the physical defects of the eyes or any material percentage thereof; and