

Complaint

IN THE MATTER OF
NATURE'S HERB COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4601. Complaint, Sept. 29, 1941—Decision, Jan. 9, 1942*

Where a corporation engaged in interstate sale and distribution of a preparation known as Sterling Capsules; in advertisements in newspapers and periodicals, circulars, leaflets, and other advertising literature—

- (a) Represented that said product constituted a competent, effective, and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; would permanently relieve pains, aches, stiffness, and soreness in stubborn cases of such conditions; and would produce amazing and remarkable results;

The facts being its value in the treatment of said conditions was limited to that of a laxative or cathartic and a mild analgesic which would afford temporary relief from pain; and

- (b) Failed to give adequate directions for using said capsules and to reveal that the preparation contained gelsemium root, use of which drug, under usual conditions or those described in said advertisements, might have injurious consequences unless the dosage was limited to two or three days; and
- (c) Failed further in said advertisements to give adequate warning that said preparation was a laxative or cathartic, depending on dosage; that it was potentially dangerous, and not to be taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis;

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

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

Mr. James L. Baker for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondent.

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 Nature's Herb Co., a corporation, 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, Nature's Herb Co., is a corporation, created, organized and existing under and by virtue of the laws of the

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State of California, with its office and principal place of business at 1260 Market St., San Francisco, Calif.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation advertised as Sterling Capsules.

In the course and conduct of its business, the respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and, at all times mentioned herein, has maintained, a course of trade in said medicinal preparation, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its 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 its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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, by circulars, leaflets, and other advertising literature are the following:¹

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that its medicinal preparation, advertised as Sterling Capsules, constitutes a competent, effective, and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; that its use will permanently relieve pains, aches, stiffness, and soreness in stubborn cases of the aforesaid condition; and that its use will produce amazing and remarkable results.

¹ The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of its said preparation, is also set forth in the findings, *infra*, at p. 509, and for that reason is here omitted in the interest of brevity.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the preparation sold and distributed by the respondent as aforesaid, advertised as Sterling Capsules, is not a competent, effective, or remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, or neuritis and has no substantial therapeutic value in the treatment of said conditions. Its use will not permanently relieve pains, aches, stiffness, and soreness in cases of the aforesaid condition. Furthermore, said preparation is of no therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as a mild analgesic which will afford temporary relief from pains associated with the above-mentioned conditions.

PAR. 6. The respondent's 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 presumed in such advertisements, under such conditions as are customary or usual.

In truth and in fact, said preparation is dangerous to health in that its cumulative effect in the system may result in chronic local irritation of the alimentary tract, gastrointestinal disturbances, collapse, or other physical impairment. The danger of such injury may be avoided only by limitation of dosage to a period of not more than 2 or 3 days.

Furthermore, respondent's said preparation is a laxative or a cathartic, depending upon dosage, and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on a laxative.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 29, 1941, issued, and on October 3, 1941, served its complaint in this proceeding upon respondent, Nature's Herb Co., a corporation, charging it with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On the 28th day of October 1941, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Clinton Robb, 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. Respondent expressly waived the filing of a report upon the evidence by the trial examiner. 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. Respondent, Nature's Herb Co., is a corporation duly organized and existing under the laws of the State of California with its office and principal place of business at 1260 Market Street, San Francisco, Calif.

PAR. 2. For several years last past respondent has been and now is engaged in the business of distributing and selling, in commerce among and between the various States of the United States and in the District of Columbia, a preparation known and advertised as Sterling Capsules.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and caused to be disseminated, and in some instances now is disseminating and causing to be disseminated, certain advertisements concerning its product, Sterling Capsules, by

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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 caused to be disseminated, and in some instances now is disseminating and causing to be disseminated, certain advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of Sterling Capsules in commerce, as commerce is defined in the Federal Trade Commission Act.

Among, and typical of, the statements contained in the aforesaid advertisements, so disseminated and caused to be disseminated, by United States mails, by advertisements in newspapers and periodicals, by circulars, leaflets, and other advertising literature, are the following:

NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES must relieve pains, aches, stiffness, and soreness, or no cost. If tired of spending money without getting definite benefit, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB COMPANY, Div. 156,
1260 Market St., San Francisco.

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DON'T BE A SLAVE TO

ARTHRITIS

RHEUMATISM, NEURITIS

Learn about the amazing relief others have obtained from STERLING CAPSULES. Pains, aches, stiffness and soreness must soon be alleviated or no cost to you. If tired of spending money without getting definite help call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB COMPANY, Div. 190,
1260 Market St., San Francisco.

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NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES have given excellent results in stubborn cases where other methods failed. They must relieve pains, aches, stiffness, and soreness, or no cost. If tired of spending money without getting definite benefit, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB CO., Div. 136,
1260 Market St., San Francisco.

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NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES must relieve the pains and aches to your satisfaction or no cost. This offer is open to every sufferer who obtains the capsules at our store and takes them as directed for thirty days. If tired of spending money without getting satisfactory results, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB Co., Div. 314,
1260 Market St., San Francisco.

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ARE YOU A SLAVE TO PAINS OF

ARTHRITIS

RHEUMATISM, NEURITIS?

If so we want you to try STERLING CAPSULES on our written guarantee of money back if they fail to relieve the pains and aches to your satisfaction after taking as directed for thirty days. This offer is open to every sufferer who buys the capsules at our retail store. Call or write for full particulars regarding STERLING CAPSULES and copy of guarantee.

NATURE'S HERB Co., Div. 322,
1260 Market St., San Francisco.

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DON'T BE A SLAVE TO

ARTHRITIS

RHEUMATISM, NEURITIS

Learn about the amazing results given by STERLING CAPSULES in stubborn cases. Pains, aches, stiffness, and soreness must soon be relieved, or no cost to you. If tired of spending money without getting satisfactory relief, write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB Co., Div. 22,
1260 Market St., San Francisco, Calif.

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STERLING CAPSULES

A highly effective combination of medicines for the relief of Pains, Aches, Stiffness, or Soreness due to RHEUMATISM, ARTHRITIS, SCIATICA, LUMBAGO, NEURALGIA, or NEURITIS. Contains no narcotics—no dope of any kind. Sterling Capsules have proven to be one of the most remarkable medicinal preparations ever offered by us for alleviating the above conditions. Men and women who had suffered a long time, trying one treatment after another without getting more than slight temporary relief, tell us that their pains and aches have not returned since taking Sterling Capsules.

Sterling Capsules are Recommended for the Following: * * *

Pain, stiffness, or soreness in muscles of the neck, shoulders, arms, legs, hips, or back.

Dull pain at the back of the neck, often accompanied by severe headache.

Gnawing pain, numbness, tingling or tenderness along the course of the sciatic nerve, which extends down the thigh and leg to the sole of the foot.

Extreme stiffness and soreness in muscles at the small of the back caused by lumbago. Agonizing pain is usually felt when the sufferer attempts to sit down or get up.

Dull, burning pain or soreness in joints of the toes, fingers, ankles, arms, knees, or hips resulting from arthritis.

SOLD ON A MONEY-BACK GUARANTEE OF SATISFACTION

We guarantee to refund your money if Sterling Capsules should fail to give satisfactory results after taking them as directed for thirty days.

A month's supply of three bottles costs only \$5. Single bottle sufficient for 10 days, costs \$2.00. Our money-back guarantee applies to every person who has taken THREE bottles within 30 days, whether purchased singly or all at one time. This guarantee is reserved exclusively for persons who buy the capsules direct from us at retail.

NATURE'S HERB REMEDY

1260 Market St.

San Francisco, Calif.

PAR. 4. The statements hereinbefore set forth and other statements similar thereto not specifically set forth herein, represents that respondent's medicinal preparation, Sterling Capsules, constitutes a competent, effective and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; that its use will permanently relieve pains, aches, stiffness, and soreness in stubborn cases of the aforesaid conditions; and that its use will produce amazing and remarkable results.

PAR. 5. In truth and in fact the preparation sold and distributed by the respondent as aforesaid, advertised as Sterling Capsules, is not a competent, effective, or remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis, and has no substantial therapeutic value in the treatment of said conditions. The therapeutic value of Sterling Capsules is limited to that of a laxative or cathartic which will temporarily evacuate the bowels and to that of a mild analgesic which will afford temporary relief from pain associated with the above-named conditions.

PAR. 6. The respondent's advertisements, so disseminated, fail to reveal adequate directions for using Sterling Capsules and that the present formula for this preparation contains Gelsemium Root, the use of which drug, under the conditions described in said advertisements or under customary or usual conditions, may have injurious consequences and be potentially dangerous to health unless the dosage is limited, under said present formula, to not more than two or three days.

The respondent's advertisements further fail to reveal adequate warning that said preparation is a laxative or cathartic, depending

on dosage; and that it is potentially dangerous and that it is not to be taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing statements and representations with respect to its 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Nature's Herb Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation advertised as Sterling Capsules, or any product 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 prepa-

ration constitutes a competent or effective cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, or neuritis; or that said preparation is of any therapeutic value in excess of a mild analgesic which may afford temporary relief from pain associated with the aforesaid diseases or conditions, and in excess of a laxative or cathartic which will temporarily evacuate the bowels; or which advertisement fails to reveal (a) that said preparation may be injurious to health unless its dosage is limited to a period of 2 or 3 days; and (b) 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 of said preparation, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain warnings 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 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 affirmative cautionary requirements as set forth in said paragraph.

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

IN THE MATTER OF
HIRAM CARTER, INC., AND S. FRED GRIFFIN

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

Docket 4101. Complaint, Apr. 23, 1940—Decision, Jan. 12, 1942

Where a corporation and an individual who was its president and principal owner and directed and controlled its sales policies and other activities; engaged in interstate sale and distribution of six medicinal preparations including a salve, collectively designated as "Old Surgeon's" or "Old Surgeon's Remedy" or "Old Surgeon's Double Duty Remedy," together comprising a treatment divided into a so-called preparatory course lasting for 5 days to be followed by a second course for an indefinite period; by various advertisements distributed through the mails and otherwise, directly or by implication—

- (a) Represented that their said products constituted a cure or remedy, or a competent and effective treatment for impotence, lost energy, indigestion, rheumatism, asthenia, neurasthenia, general debility, neuritis, polyneuritis, and arthritis; and
- (b) Represented that said preparations would prevent premature old age and would rejuvenate those who had been overcome by the vicissitudes thereof; and that their use would restore and beneficially affect the functioning of exhausted glands, nerves, or organs;

The facts being that the combination of drugs involved in said treatment did not constitute a remedy or a competent treatment for the conditions named; said "Old Surgeon's" had no therapeutic value except for temporarily decreasing pain or discomfort; had no influence on the underlying causes of "general debility"; would not prevent premature old age, or rejuvenate its victims; would not restore or benefit exhausted glands, nerves, or organs; and had no therapeutic usefulness in excess of its laxative and analgesic qualities except in cases of anemia due to iron deficiency or in cases of deficiency of thiamin chloride, riboflavin, or nicotinic acid; and

- (c) Represented that the price at which its said preparations were offered for sale was special or reduced and much less than the usual price;

Facts being that "Old Surgeon's" sold not for \$5.00 as represented, but for approximately \$1.94, which was not a special or reduced price but that at which preparations in question were customarily offered for sale in the regular course of business; and

- (d) Represented that their physical plant, equipment and facility was greater than was the fact through use upon their letterheads and stationery of an exaggerated depiction of their purported place of business, showing a large two or three story building;

When in fact, their business occupied two office rooms and a loft on the second floor of a moving picture theatre;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public—members of which prefer to patronize large, well-established manufacturers and dealers because of the belief that they are more reliable and afford better service and other advantages—into the mistaken