

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

belief that representations and implications above set forth were true and into the purchase of products in question, by reason thereof:

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

Before *Mr. John W. Addison* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Hiram Carter, Inc., a corporation, and S. Fred Griffin, an individual, 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. Respondent, Hiram Carter, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 5706 Hoffman Drive, Elmhurst, Long Island, N. Y. The respondent, S. Fred Griffin, of the same address, is president and principal owner of said corporation and directs and controls the sales policies and other activities of the said corporate respondent with respect to the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various medicinal preparations, which are designated generally as Old Surgeon's, Old Surgeon's Remedy, and Old Surgeon's Double Duty Remedy, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause said preparations, when sold, to be transported from their place of business in the State of New York 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 medicinal preparations 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 preparations by the United States mails, in circulars, pamphlets, and other printed or written matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, and by 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 their said preparations; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

Pictures of a dejected, haggard, worried-looking man, followed by pictures, apparently of the same man, in robust health and in a bright, gay, and cheerful mood, with the following statements directly underneath:

He's listless and low, sleeps poorly, nerves on edge, bothered with indigestion and sundry aches and pains, but worst of all his strength seems to have ebbed away so he's only half the man he used to be.

Back on the job again feeling tip top. Hard work means nothing now—and after a good day's work he feels like going out evenings for a good time. Life is worth living once more. He tells all his friends about Old Surgeon's and he's sending his photograph and testimonial for the benefit of others who need the same kind of help. His message is "Go thou and do likewise."

In circular letters:

* * * they can't say exactly what is wrong but they know they have lost much of their force and get-up; sleep is disturbed maybe more or less casual rheumatism pains, indigestion, irritable, etc.—what worries them most being, they feel generally way below what they know they ought to and nothing they do for it seems to hit the spot.

It is astonishing how many there are living at 50 percent of their normal usefulness and spirit, always drugged by intestinal pollution—and never suspecting the cause of it all.

I want you to expect a great deal from Old Surgeon's.

You want results as quickly as possible, of course.

You are anxious to feel stronger and livelier, and better able to stand the strain of every-day life.

Now about the costs again. I promised to keep them low enough to be within your reach. The full price for one complete set of Old Surgeon's is \$5.00 and many have said if I charged them ten times \$5.00 and more they got their money's worth over and over again. But during these troubled days when

everything is selling for half price or less I don't expect folks to pay what Old Surgeon's is *worth*. Neither do I ask you to pay the full price in advance.

What I am willing to do is to provide the needed course I am counting on for renewed uplift—results to make you *well satisfied*—and charge you only for costs of medicines, postage, etc.

Read about Ingredient A—how it effects the nervous system—how it is invaluable in subdued *energy* and *weakness*—whether general or limited to a single function.

How it sharpens the mental faculties and influences a more cheerful and contented frame of mind. *How its value as a tonic in stimulating the flagging forces of the aging*—"can hardly be over-estimated." How Ingredient B is the outstanding agent among all known medicines for the purpose of increasing red blood cells, and is prescribed with benefit to the feeble, in sluggishness of functions, and in all run-down conditions.

How Ingredient C has the peculiar action of special vascular dilation, and combined with Ingredient A, raises the sensitiveness of all reflexes and impulses.

How Ingredient D is of distinct aid in improving digestion, improves the gastric secretion and spontaneous action—and promotes *constructive regeneration*.

How Ingredient E increases the flow of bile and is a *diuretic stimulant to the kidneys*, relieves *intestinal poisoning* influences metabolism by augmenting urea and elimination of uric acid—and is particularly serviceable in *mitigating pains of subacute rheumatism*.

Read carefully what is said about the mischievous effects, and dangers, coming from the stagnating contents of the intestinal canal, and how *seeming regularity of the bowels is often misleading*. The importance of proper hygienic measures to correct this condition, and the value of Ingredient F for this purpose. Such are the words of medical authority, the sum of all truth obtainable as known to this group of scientists.

They tell you *how it works out in practice* how they had been troubled with indigestion, "nerves," weakness, pains, felt continually tired-out, miserable and low—all before their time.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparations designated as Old Surgeon's, Old Surgeon's Remedy, and Old Surgeon's Double Duty Remedy, are a cure or remedy or a competent and effective treatment for impotence or lost energy, indigestion, rheumatism, asthenia, neurasthenia, gout, sciatica, general debility, neuritis, and arthritis; that said preparations will prevent premature old age and will rejuvenate those who have been overcome by the vicissitudes of old age; that the use of such preparations will restore or beneficially affect the functioning of exhausted glands, nerves, or organs; that the price at which said preparations are offered for sale is a special or reduced price and is much less than the price at which said preparations are customarily offered for sale in the normal and regular course of business.

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PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact said preparations are not a cure or remedy or a competent or effective treatment for lost energy, asthenia, neurasthenia, general debility or general weakness and possess no therapeutic value in connection with such disorders. Said preparations are not a cure or remedy for indigestion, rheumatism, gout, sciatica, neuritis, or arthritis, and said preparations possess no therapeutic value in connection with the treatment of said conditions or disorders in excess of possessing slight laxative and analgesic properties. Said preparations will not prevent premature old age nor will they rejuvenate those who have been overcome by the vicissitudes of old age. The use of said preparations will not serve to restore or beneficially affect the functioning of glands, nerves, or organs. The price at which said preparations are offered for sale is in no sense a special or reduced price, but is the regular and customary price at which said preparations are offered for sale and sold in the normal and regular course of business.

PAR. 6. In addition to the representations hereinabove set forth, the respondents are also engaged in the dissemination of false and misleading advertisements through the use of an exaggerated pictorial representation of their place of business, appearing on circulars and other printed matter, depicting respondents' place of business as a large, two- or three-story building, and thereby creating the impression that their business is larger and more extensive than is actually the fact.

PAR. 7. In truth and in fact, respondents do not occupy a large, two- or three-story building in the operation of their said business, but merely occupy two small offices and a loft on the second floor of a building used principally by a moving picture theater.

PAR. 8. A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing products and merchandise from manufacturers or other dealers who operate on a large scale, have extensive plants and do a large volume of business, believing that by purchasing from such large concerns superior quality, better service, lower prices, and other advantages can be obtained.

PAR. 9. Respondents are further engaged in the dissemination of false advertisements by writing and transmitting letters through the United States mails to prospective purchasers, which letters are written in the first person, and thereby infer or imply that Hiram Carter in person is the writer thereof, and constitute in part a story of his implied recovery from various physical ailments by virtue of using Old Surgeon's remedies or products.

PAR. 10. In truth and in fact, the said Hiram Carter died several years ago. He was not the author of any of said letters.

PAR. 11. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated statements, representations and implications with respect to respondents' preparations and business status, 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 said statements, representations, and implications are true, and into the purchase of respondents' said products because of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices 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 April 23, 1940, issued and subsequently served its complaint in this proceeding upon respondents Hiram Carter, Inc., a corporation, and S. Fred Griffin, an individual, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition to the allegations of the complaint by attorneys for the respondents before an 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 the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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, Hiram Carter, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of

business at 5706 Hoffman Drive, Elmhurst, Long Island, N. Y. Respondent S. Fred Griffin, of the same address, is president and principal owner of said corporation and directs and controls the sales policies and other activities of said corporate respondent with respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various medicinal preparations which are designated as "Old Surgeon's," or "Old Surgeon's Remedy," or "Old Surgeon's Double Duty Remedy." Respondents have caused said preparations, when sold, to be transported from their place of business in the State of New York 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 medicinal preparations 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 respondents, by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparations; and respondents, by various means, have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

Pictures of a dejected, haggard, worried-looking man, followed by pictures apparently of the same man in robust health and in a bright, gay, and cheerful mood, with the following statements directly underneath such pictures:

He's listless and low, sleeps poorly, nerves on edge, bothered by indigestion and sundry aches and pains. But worst of all, his strength seems to have ebbed away so he's only half the man he used to be.

Back on the job again feeling tip top. Hard work means nothing now—and after a good day's work he feels like going out evenings for a good time. Life is worth living once more. He tells all his friends about Old Surgeon's. And he's

sending his photograph and testimonial for the benefit of others who need the same kind of help. His message is "Go thou and do likewise."

Other representations are:

* * * they can't say exactly what is wrong but they know they have lost much of their force and get-up, sleep is disturbed, maybe more or less casual rheumatism pains, indigestion, irritable, etc.—what worries them most being, they feel generally way below what they know they ought to. And nothing they do for it seems to "hit the spot."

* * * It is astonishing how many there are living at 50 percent of their normal usefulness and spirit, always drugged by intestinal pollution—and never suspecting the cause of it all.

* * * I want you to expect a great deal from Old Surgeon's.

* * * You want results as quickly as possible, of course.

You are anxious to feel stronger and livelier, and better able to stand the strain of everyday life.

Now about the costs again. I promised to keep them low enough to be within your reach. The full price for one complete set of Old Surgeon's is \$5.00 and many have said if I charged them ten times \$5.00 and more they got their money's worth over and over again. But during these troubled days when everything is selling for half price or less I don't expect folks to pay what Old Surgeon's is worth. Neither do I ask you to pay the full price in advance.

What I am willing to do is to provide the needed Course I am counting on for renewed uplift—results to make you *well satisfied*—and charge you only for costs of medicines, postage, etc.

* * * Read about Ingredient A—how it effects the nervous system—how it is invaluable in *subdued energy* and *weakness*—whether general or limited to a single function.

How it *sharpens the mental faculties* and influences a more cheerful and contented frame of mind. How its value as a tonic in *stimulating the flagging forces of the ageing*—"can hardly be overestimated."

How Ingredient B is the outstanding agent among all known medicines for the purpose of increasing red blood cells, and is prescribed with benefit to the feeble, in sluggishness of functions, and in *all run down conditions*.

How Ingredient C has the peculiar action of special vascular dilation, and combined with Ingredient A, raises the sensitiveness of all reflexes and impulses.

How Ingredient D is of distinct aid in *improving digestion*, improves the gastric secretion and spontaneous action—and promotes *constructive regeneration*.

How Ingredient E increases the flow of bile and is a *diuretic stimulant to the kidneys*, relieves *intestinal poisoning*, influences metabolism by augmenting urea and elimination of uric acid—and is particularly serviceable in *mitigating pains of subacute rheumatism*.

Read carefully what is said about the mischievous effects, and dangers, coming from the stagnating contents of the intestinal canal, and how seeming *regularity of the bowels is often misleading*. The importance of proper hygienic measures to correct this condition, and the value of Ingredient F for this purpose.

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* * * They tell you how it works out in practice. How they had been troubled with indigestion, "nerves," weakness, pains, felt continually tired out, miserable, and low—old before their time.

* * * All "PLAYED OUT" when PLAYTIME comes—and he used to be Brimming Over With Life!

* * * Among its many indications, perhaps loss of appetite, muscular weakness, low blood pressure, polyneuritis, neuritis, nervousness, irritability, excessive fatigue, retardment of senility, gastro-intestinal malfunction, lowering of tonicities or balance, when not attributable to definite disease, * * *.

Glow of Living—RECAPTURED

Here's the other—and *pleasanter side* of the picture. A well earned holiday after a week's hard work. He isn't as young as he used to be—he's past fifty in fact—but what of it?

He's married to the little woman beside him for twenty years—but as his wife laughingly remarks—he acts like a big boy without a care in the world. And is she proud of him?

There was a time in his life neither of them like to think about. It was those dark years when a strange, unhealthy "something" seemed to take the very life out of him.

She suffered too. How she missed those delightful hours of companionship—the wonderful family life that made her so happy before that awful change came over him.

PAR. 4. By the use of statements such as those set forth in the preceding paragraph respondents have represented, directly or by implication, that their medicinal preparations designated as "Old Surgeon's," "Old Surgeon's Remedy," and "Old Surgeon's Double Duty Remedy" are a cure or remedy, or a competent and effective treatment for impotence, lost energy, indigestion, rheumatism, asthenia, neurasthenia, general debility, neuritis, polyneuritis, and arthritis; that said preparations will prevent premature old age and will rejuvenate those who have been overcome by the vicissitudes of old age; that the use of such preparations will restore and beneficially affect the functioning of exhausted glands; nerves, or organs; and that the price at which said preparations are offered for sale is a special or reduced price and is much less than the price at which said preparations are customarily offered for sale in the normal and regular course of business.

PAR. 5. Respondents' "Old Surgeon's" treatment consists of six preparations which are designated and referred to as "No. 22," "No. 44," "No. 55," "No. 66," "No. 77," and "No. 88," respectively. The formulae for these preparations are as follows:

No. 22:

Magnesium Sulphate, 40 grains.
Phenolphthalein, 1 grain.

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Sodium Carbonate, 1 grain.

No. 44:

Sodium Salicylate, 4 2/10 grains.

Methylene Blue, 1/4 grain.

No. 55, a salve for external application:

Methyl Salicylate, 2 parts.

Menthol, 1 part.

Guliacol, 1 part.

Lanolin, 8 parts.

No. 66, until about January 1, 1940:

Saccharated Ferrous Carbonate, 4 grains.

Quinine Sulphate, 1/4 grain.

Extract Nux Vomica, 1/15 grain.

Yohimbine Hydrochloride, 1/18 grain.

Vitamin B₁, 25 International Units.

Riboflavin and other factors

No. 66, since about January 1, 1940

Quinine Sulphate 2 1/4 grains.

Iron Sulphate Exsiccated, 2 grains.

Thiamin Chloride, 200 International Units.

Riboflavin, 375 Gamma.

Nicotinic Acid, 2 milligrams.

No. 77:

Sodium Bicarbonate, 40 grains.

Citric Acid, 20 grains.

No. 88:

Cascara Sagrada, 1 grain.

And necessary filler.

The treatment recommended by respondents through the use of the aforesaid medicinal preparations is divided into a so-called preparatory course lasting for 5 days and followed by a second course to be continued for an indefinite period. The directions for the "preparatory course" provide for dissolving one "No. 22" powder in water, adding one "No. 77" powder, and taking immediately upon arising in the morning, followed by two "No. 44" pills after the noon meal and two more such pills after the evening meal. The same routine is to be followed on the second day. On the third day the combination of "No. 22" and "No. 77" is to be taken as before, with one "No. 44" pill after each of the three meals. On the fourth day one "No. 44" pill is recommended after each of the three meals, and the same routine is indicated for the fifth day. After the completion of this "preparatory course" the directions for the second course provide for taking four "No. 44" pills daily, one after each of the three meals and before going to bed on Mondays, Tuesdays, and Wednesdays of each week; and four "No. 66" pills daily, one after each of the three meals and before going to bed on Thursdays, Fridays, Saturdays, and Sundays of each week. "No. 88" pills are represented

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as a laxative and it is suggested that from one to five may be taken as needed to keep the bowels open. The "No. 55" salve is to be used when desired by applying to parts affected.

PAR. 6. The combination of "No. 22" and "No. 77" amounts to an alkaline laxative with the possible effect of purgation. The effect of this preparation is temporary only and wears off in a few days, leaving the individual as much or more constipated than ever. The therapeutic value of the preparation designated as "No. 44" is largely, if not entirely, that of sodium salicylate, which is an analgesic and anti-rheumatic and which may afford partial temporary relief from rheumatic pain or discomfort and partial relief from general discomfort in joints or muscles. When its use is discontinued the effects soon wear off. The methylene blue content in "No. 44" has no definitely established therapeutic usefulness. It is excreted by the kidneys and colors the urine blue or green, and this may have some psychological effect upon the patient.

The "No. 55" salve is a local analgesic and when applied locally is a mild irritant. It might serve the purpose of a counter irritant and result in dilating the cutaneous blood vessels, improving circulation through the skin at the point of application, affording a feeling of warmth, and having a tendency to relieve local pain. The effect of this preparation is temporary only.

In the form used until about 1940 the preparation designated as "No. 66" contained saccharated ferrous carbonate, which is useful in the treatment of anemia due to iron deficiency but has no therapeutic usefulness in aremia due to other causes. Quinine sulphate in sufficient quantities is a specific for malaria, but the amount contained in the preparation designated "No. 66" is insufficient to have any value in the treatment of malarial conditions although it may have some stomachic or tonic value. The active ingredient of nux vomica contained in "No. 66" is strychnine and the dosage in the quantity recommended by respondent would have a mild stimulating action on the central nervous system and possibly some tonic value. The yohimbine hydrochloride content of "No. 66" is a drug which has not been recognized as having therapeutic usefulness. It has been suggested as an aphrodisiac but in the dosage contained in "No. 66" would not have any effect upon the normal person except possibly to cause vertigo, mental confusion, or irritation of the kidneys. In toxic doses it is likely to damage the kidneys. The Vitamin B content of this preparation might be useful in instances where the individual suffers from a deficiency, but such cases are not particularly common and the dosage is not sufficient for therapeutic purposes in cases of actual deficiency.

The formula used in "No. 66" since about the first of 1940 does not contain the extract of *nux vomica* or the yohimbine hydrochloride formerly used and the vitamin content has been changed. The quinine sulphate and the iron sulphate contained in the modified formula have the same therapeutic value and the same limitations as indicated for those ingredients of the original formula. Vitamin therapy is at present a somewhat uncertain field. There are certain deficiency diseases such as beriberi and pellagra which are effectively treated by the administration of vitamins. In the absence of vitamin deficiency, however, there is no demonstrated therapeutic value in the administration of vitamins.

The therapeutic content of the preparation known as "No. 88" is *cascara sagrada*, which is a mild irritant laxative.

PAR. 7. When taken as directed the combination of drugs designated by respondents as "Old Surgeon's" does not constitute a cure or remedy, or a competent or effective treatment, for impotence, lost energy, indigestion, asthenia, or neurasthenia. "Old Surgeon's" has no therapeutic value in the treatment of rheumatism, neuritis, polyneuritis, or arthritis except for a temporary decrease in pain or discomfort, and with respect to general debility it will have no influence on the underlying causes which produce the combination of symptoms so designated. "Old Surgeon's" will not prevent premature old age, nor will it rejuvenate those who have been overcome by the vicissitudes of old age. Its use will not restore or beneficially affect the functioning of exhausted glands, nerves, or organs. "Old Surgeon's" has no therapeutic usefulness in excess of its laxative and analgesic qualities except in those cases where there is an anemia due to iron deficiency or where there is a deficiency of thiamin chloride, riboflavin, or nicotinic acid.

The price of "Old Surgeon's" is not \$5, as represented, but is approximately \$1.94. This price of \$1.94 is not a special or reduced price but is the price at which such preparations are normally and customarily offered for sale in the regular course of business.

PAR. 8. Respondents also disseminate, as aforesaid, false and misleading advertisements through the use upon their letterheads and other stationery of an exaggerated pictorial representation of their purported place of business. These illustrations depict a large two- or three-story building. In fact respondents' business occupies two office rooms and a loft on the second floor of a building used as a moving picture theater. Members of the purchasing public have a preference for trading with or patronizing large, well-established manufacturers and dealers because of the belief that such concerns are more reliable, more responsible, afford better service, and other advantages.

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PAR. 9. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated statements, representations, and implications with respect to their medicinal preparations, the price thereof, and the size of their business establishment has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and implications are true, and into the purchase of respondents' said products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices as herein set forth 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 the answer of respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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 respondent Hiram Carter, Inc., a corporation, its officers, agents, representatives, and employees, and S. Fred Griffin, an individual, his agents, representatives, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the medicinal preparations designated as "Old Surgeon's," or any other medicinal preparation or preparations which are substantially similar in composition or possess substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference—

- (a) That respondents' medicinal preparations constitute a cure or remedy, or a competent or effective treatment, for impotence, lost

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energy, indigestion, asthenia, or neurasthenia, or will prevent premature old age, or will restore or beneficially affect the functioning of exhausted glands, nerves, or organs, or will rejuvenate those who have been overcome by the vicissitudes of old age;

(b) That respondents' medicinal preparations constitute a cure or remedy for rheumatism, neuritis, polyneuritis, or arthritis, or have any therapeutic value in the treatment of such conditions in excess of affording temporary partial relief from the symptoms of pain;

(c) That respondents' medicinal preparations have any therapeutic value in excess of that afforded by a laxative or analgesic in the treatment of any other diseases or conditions, except in cases of anemia due to iron deficiency or in certain conditions resulting from a deficiency of thiamin chloride, riboflavin, or nicotinic acid where such deficiency is adequately supplied by respondents' preparations under conditions of use;

(d) That the usual and customary prices at which respondents offer for sale or sell their medicinal preparations in the regular course of business are special or reduced prices, or less than the prices at which said preparations are customarily offered for sale or sold in the regular course of business.

2. Disseminating or causing to be disseminated, by any means, any advertisement 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 medicinal preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Representing pictorially, or otherwise, that the physical plant, equipment, and facilities owned, used, or occupied by respondents are greater than is the fact.

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.

Complaint

34 F. T. C.

IN THE MATTER OF
THE POWERINE COMPANY

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

Docket 4423. Complaint, Dec. 18, 1940—Decision, Jan. 13, 1942

Where a corporation engaged in competitive interstate sale and distribution of petroleum products to retailers and jobbers—

Furnished and distributed to its dealers its so-called "Right in the Palm of Your Hand" sales promotion plan for use in the sale and distribution of its said products to the consuming public in a manner involving operation of a game of chance, gift enterprise, or lottery scheme, under which customer of dealer, by pasting into the booklet provided 180 10-cent sales receipts, became entitled, according to the award designated and concealed within each booklet's gold seal, to "three quarts of corporation's motor oil, a grease job, or five, ten, or twenty gallons of gasoline, or to \$1, \$2 or \$20 in cash"; said corporation refunding such awards to retailers upon the return of the booklets; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or games of chance in the sale of its products in accordance with said plan under which retailer dealer purchased from it and sold and distributed its said products in accordance therewith, and involving the sale of a chance to procure merchandise or sums of money of much greater value than the amounts to be paid therefor; contrary to the established public policy of the United States Government, and in violation of criminal laws, and in competition with many who are not willing to use any method involving chance or contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such products were attracted by its said sales plan and element of chance involved therein and were thereby induced to purchase said products from it in preference to those of aforesaid competitors, and with capacity and tendency thereby to unfairly divert trade to it from them:

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

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

Mr. Carrel F. Rhodes and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. Frank C. Myers, of Denver, Colo., 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