

Complaint

IN THE MATTER OF

JOHN B. ARMSTRONG, M. D., TRADING AS PINK OINTMENT
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4622. Complaint, Oct. 31, 1941—Decision, Feb. 16, 1942*

Where an individual, engaged in interstate sale and distribution of his "Pink Ointment"; by advertisements disseminated through radio continuities, in which were included purported testimonial statements—

- (a) Represented, directly and by implication, that his said preparation was a cure and remedy for eczema, poison ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison oak, and sore, tender, itching, and burning feet, and a competent and effective treatment therefor;

When in fact it had no therapeutic value in said ailments and conditions in excess of affording temporary local relief due to its counterirritant, antipruritic and analgesic properties, and its antiseptic effect; repeated or continued use whereof to secure such relief might become dangerous; and

- (b) Failed to reveal facts material in the light of aforesaid representations, or with respect to consequences which might result from use of product under usual or prescribed conditions, in that it contained sufficient phenol to be dangerous to health, and use thereof might cause a necrosis of the skin and tissues, and systemic poisoning, including irritation of the kidneys, danger of which would be increased if skin to which it was applied was inflamed or broken;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and with the tendency and capacity to induce such public, because of its mistaken belief, to purchase substantial quantities of his said product:

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. Maurice C. Pearce for the Commission.

Williams & Elleman, of Topeka, Kans., 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 John B. Armstrong, M. D., an individual, trading as Pink Ointment 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

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John B. Armstrong, M. D., is an individual, trading under the name of Pink Ointment Co., and has his principal place of business located at 521 Kansas Avenue, Topeka, Kans. He is now, and for more than 1 year last past, has been engaged in the business of preparing and offering for sale and selling a medicinal preparation designated as "Pink Ointment."

Respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Kansas to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times herein mentioned has maintained a course of trade in his said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

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 advertisements concerning his said product by radio continuities, 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 radio continuities 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 the said advertisements disseminated and caused to be disseminated by radio continuities as hereinabove set out are the following:

About a year ago, I had a bad case of eczema on my hands and I used Pink Ointment to clear it up * * *. My son had a bad case of poison-ivy and he used the Pink Ointment and it cleared it up in no time at all.

* * * It is very effective, according to many reports, in the treatment of eczema, ringworm * * * rash and itch that has been caused by some outside source.

Pink Ointment is the only thing we ever used that helped our condition of weed poisoning.

For eczema * * *. cuts, burns, or bruises use Pink Ointment first and save yourself a lot of time and money.

It sure is the best ever for athlete's foot.

We have used Pink Ointment for all kinds of skin irritation. It is by far the best to be had on the market today.

Another danger that should be overcome is this—children get chigger bites, mosquito bites and poison-ivy—and prickly heat, then they scratch the skin's surface and as a result they develop a serious infection. The way to overcome

this is to keep Pink Ointment in the medicine cabinet and use it as directed. Pink Ointment is recommended in the treatment of sunburn, itch, hives, rash, prickly heat, poison-ivy, weed poisoning, dust poisoning, poison-oak, and sore, tender, itching, and burning feet.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's preparation, respondent has represented and does now represent directly and by implication that his preparation is a cure and remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, and that it is a competent and effective treatment therefor.

PAR. 4. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, nor is it a competent or effective treatment therefor. Furthermore, said preparation has no therapeutic value in excess of its antiseptic effect, and its effect in affording temporary, local relief due to its counter-irritant, anti-pruritic, and analgesic properties. Its use in order to secure such relief may be dangerous, and its repeated or continued use will increase such danger.

PAR. 5. 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 prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, said preparation contains phenol in sufficient quantities to be dangerous to the health of the user. Its use may cause necrosis of the skin and tissues, and systemic poisoning, including irritation of the kidneys. The danger of such injury will be increased if the skin to which it is applied is inflamed or broken.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to the preparation "Pink Oint-

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ment" has had and now has the capacity of 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 has the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

PAR. 7. The aforesaid acts and practices of the respondent 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 October 31, 1941, issued and subsequently served its complaint in this proceeding upon respondent, John B. Armstrong, M. D., an individual, trading as Pink Ointment Company, 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, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, John B. Armstrong, M. D., is an individual, trading under the name of Pink Ointment Co., and has his principal place of business located at 521 Kansas Avenue, Topeka, Kans. He is now, and for more than one year last past, has been engaged in the business of preparing and offering for sale and selling a medicinal preparation designated as "Pink Ointment."

Respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Kansas to the

purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times herein mentioned has maintained a course of trade in his medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of advertisements concerning his product by radio continuities, 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 product by radio continuities for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his 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 the advertisements disseminated and caused to be disseminated by radio continuities as hereinabove set out are the following:

About a year ago, I had a bad case of eczema on my hands and I used Pink Ointment to clear it up. * * * My son had a bad case of poison-ivy and he used the Pink Ointment and it cleared it up in no time at all.

* * * it is very effective, according to many reports, in the treatment of eczema, ringworm * * * rash and itch that has been caused by some outside source.

Pink Ointment is the only thing we ever used that helped our condition of weed poisoning.

For eczema * * *. cuts, burns, or bruises use Pink Ointment first and save yourself a lot of time and money.

It sure is the best ever for athlete's foot.

We have used Pink Ointment for all kinds of skin irritation. It is by far the best to be had on the market today.

Another danger that should be overcome is this—children get chigger bites, mosquito bites and poison-ivy—and prickly heat, then they scratch the skin's surface and as a result they develop a serious infection. The way to overcome this is to keep Pink Ointment in the medicine cabinet and use it as directed. Pink Ointment is recommended in the treatment of sunburn, itch, hives, rash, prickly heat, poison-ivy, weed poisoning, dust poisoning, poison-oak and sore, tender, itching and burning feet.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's preparation, respondent has represented and does now represent directly and by implication that his preparation is a cure and remedy for eczema.

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poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, and that it is a competent and effective treatment therefor.

PAR. 4. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, nor is it a competent or effective treatment therefor. Furthermore, his preparation has no therapeutic value in excess of its antiseptic effect, and its effect in affording temporary, local relief due to its counterirritant, antipruritic and analgesic properties. Its use in order to secure such relief may be dangerous, and its repeated or continued use will increase such danger.

PAR. 5. 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 prescribed in such advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation contains phenol in sufficient quantities to be dangerous to the health of the user. Its use may cause necrosis of the skin and tissues, and systematic poisoning, including irritation of the kidneys. The danger of such injury will be increased if the skin to which it is applied is inflamed or broken.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to the preparation "Pink Ointment" 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 has the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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 John B. Armstrong, M. D., an individual, trading as Pink Ointment Co., or 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 product, Pink Ointment, or any other product containing the same or similar ingredients, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement (a) by means of the United States mails or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that his preparation "Pink Ointment" is a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed-poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritations, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust-poisoning, poison-oak, or sore, tender, itching, or burning feet, or that said preparation is a competent or effective treatment for such diseases and conditions or that it has any therapeutic value in excess of its antiseptic effect and its effect in affording temporary, local relief due to its counter-irritant, anti-pruritic, and analgesic properties; or which advertisement fails to reveal that the use of said preparation may cause necrosis of the skin and tissues and systemic poisoning, including irritation of the kidneys, and that the danger of such injury will be increased if the skin to which it is applied is inflamed

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or broken, provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED.

2. Disseminating, or causing to be disseminated, any advertisement 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 reveal the affirmative cautionary statement required in paragraph 1 hereof.

It is further ordered, That 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.

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IN THE MATTER OF

BATTLE CREEK DRUGS, INC., AND CONSOLIDATED
ROYAL CHEMICAL CORP., TRADING AS CONSOLIDATED
DRUG TRADE PRODUCTS, AND AS BONKORA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4541. Complaint, July 17, 1941—Decision, Feb. 17, 1942*

Where a corporation and its exclusive sales agent engaged in interstate sale and distribution of former's "BonKora" preparation, offered as a reducing agent and obesity treatment; by advertisements in newspapers, periodicals, pamphlets, circulars and other advertising literature of general circulation, and by radio broadcasts—

(a) Represented, directly and by implication, that said "BonKora" was a popular cocktail preparation which would relieve obesity and reduce excess weight without the aid of a starvation diet, reducing measurements of designated parts of the body, such as hips, waist and bust, and which contained no dangerous drugs and might safely be taken repetitiously;

The facts being said product, a saline cathartic containing magnesium sulphate and buckthorn and cascara bark, would not accomplish the results claimed therefor, and might be used with safety only for the temporary evacuation of the bowels; repetitious use might result in dependence upon a laxative; contrary to being harmless, use thereof by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous; and

(b) Failed to reveal facts material in light of such representations, in that, while said advertisements referred to the "delicious foods as shown in the BonKora package," and cautionary warning appeared on package in close proximity to such list, said advertisements failed to warn or apprise reader as to dangerous possibility involved in use of preparation, or specifically to direct reader's attention to cautionary statement referred to;

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

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. James I. Rooney for the Commission.

Rosen, Francis & Cleveland and *Mr. Roland J. Dooley*, 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 Battle Creek Drugs, Inc., a corporation, and Consolidated Royal Chemical Corporation, a