

Complaint

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

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corporation, trading and doing business as Consolidated Drug Trade Products, and as BonKora Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Battle Creek Drugs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintaining its principal office and place of business in the First National Bank Building in the city of Battle Creek, State of Michigan. The respondent, Consolidated Royal Chemical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and maintaining its principal office and place of business at 544 South Wells Street, in the city of Chicago, State of Illinois. The respondent, Consolidated Royal Chemical Corporation, is trading and doing business under the name Consolidated Drug Trade Products and also under the name BonKora Co.

PAR. 2. The respondents are now, and for more than 3 years last past have been, engaged in the business of selling and distributing a drug preparation designated "BonKora," which preparation has been offered for sale and sold by respondents, as a reducing agent and as a treatment for obesity. The respondent Battle Creek Drugs, Inc., causes said preparation to be made up or manufactured for it in Detroit, Mich., according to the said respondent's formula. The said respondent then causes said product to be transported from Detroit, Mich., to its exclusive sales agent, in Chicago, Ill., the respondent, Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products. The respondents have caused and now cause, said preparation, when sold, to be transported from the place of business of respondent Consolidated Royal Chemical Corporation in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce among and between the several 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 and by various other means in commerce, as commerce is defined

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in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers and periodicals, by pamphlets, circulars and other advertising literature of general circulation, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, are the following:

Did This New

ORANGE JUICE

and

BONKORA COCKTAIL WAY

To Help Eliminate Wastes

from the Digestive System

And eating Her Fill of the

Delicious Foods as Shown in

the BonKora Package

MAKE HER

Lose 45 Pounds Excess Fat?

* * * the thing one finds many a fashionable New Yorker drinking everywhere you go these days is a BonKora Cocktail, made from Orange Juice and BonKora.

Its rage seems to have started when it became noised about that a registered nurse, who could no longer work on account of her weak, fatty condition, lost 45 pounds and 10 inches off her hips with the result that she was able to go back to work again mainly by resorting to this pungent BonKora Cocktail method.

No Dangerous Drugs; No Thyroid;

No Dinitrophenol

No Starvation

Drinking a glassful of chilled Orange Juice mixed with a tablespoonful of BonKora, two times a day, and eating their fill of the delicious foods, as shown in the BonKora package, it is claimed, has made many people lose from 7 to 67 pounds, and has made their waist and bust measurements go down from 3 to 11 inches.

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Don't delay. Test the BonKora and Orange Juice Addition to Your Reducing Program. Today! Buy a bottle of BonKora at any drug or department store today, under the maker's guarantee of satisfaction or your money back.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic value of respondents' preparation "BonKora" and of the benefits to be derived from its use, the respondents represent, directly and by implication, that said "BonKora" is a popular cocktail preparation; that it is preparation which, if taken as directed, will relieve obesity and reduce excess fat without the aid of a starvation diet; that the use of said preparation will reduce fat from designated parts of the body, such as the hips, waist and bust and reduce the measurements of such parts of the body; and that said preparation contains no dangerous drugs and may be taken repetitiously with safety.

PAR. 5. The foregoing advertisements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

In truth and in fact respondents' preparation "BonKora" is not a popular cocktail preparation. It is not a preparation which, if taken as directed, will relieve obesity and excess fat without the aid of a starvation diet. The use of said preparation will not reduce fat from designated parts of the body, such as the hips, waist, and bust and will not reduce the measurements of such parts of the body. Said preparation does contain drugs which may be dangerous under certain conditions or if used repetitiously.

PAR. 6. The respondents' advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact said preparation "BonKora" is a saline cathartic containing magnesium sulphate, supplemented by the laxative action of buckthorn bark and cascara bark, and may be used with safety only for the temporary evacuation of the bowels. Its repetitious use may be habit-forming in that the user may become dependent upon a laxative for the evacuation of the bowels. Furthermore, said advertisements are false and misleading in that they represent "BonKora" as a harmless cocktail preparation, whereas its use, by one suffering from

nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 7. The use by said respondents of the foregoing false, deceptive and misleading representations and advertisements, and others of similar nature disseminated as aforesaid, has had, and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations and advertisements are true, and has caused, and now causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation "BonKora."

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 17, 1941, issued and thereafter served its complaint in this proceeding upon said respondents, Battle Creek Drugs, Inc., and Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products and as BonKora Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 6, 1941, the respondents filed their 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 Battle Creek Drugs, Inc., and its counsel, Rosen, Francis and Cleveland and by respondent Consolidated Royal Chemical Corporation by James Hirshfield, its president, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, 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 inter-

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est of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Battle Creek Drugs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintaining its principal office and place of business in the First National Bank Building, in the city of Battle Creek, State of Michigan. The respondent, Consolidated Royal Chemical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and maintaining its principal office and place of business at 544 South Wells Street, in the City of Chicago, State of Illinois. The respondent, Consolidated Royal Chemical Corporation, is trading and doing business under the name Consolidated Drug Trade Products and also under the name BonKora Co.

PAR. 2. The respondent, Consolidated Royal Chemical Corporation, is now, and for more than three years last past, has been engaged in the business of selling and distributing a drug preparation designated "BonKora," which preparation has been offered for sale and sold by said respondent, Consolidated Royal Chemical Corporation, as a reducing agent and as a treatment for obesity. The said respondent, Battle Creek Drugs, Inc., until May 17, 1940, caused said preparation to be made up or manufactured for it in Detroit, Mich., according to said respondent's formula. The said respondent, Battle Creek Drugs, Inc., until the said May 17, 1940, then caused said product to be transported from Detroit, Mich., to its exclusive sales agent in Chicago, Ill., the respondent, Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products. The respondents, until said May 17, 1940, have caused, and since said date the said respondent, Consolidated Royal Chemical Corporation, now causes, said preparation when sold, to be transported from the place of business of respondent, Consolidated Royal Chemical Corporation, in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. The respondents have maintained a course of trade in said preparation in commerce among and between the several 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 have caused the dissemination of, advertisements concerning their said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents

have also disseminated, and have caused the dissemination of, advertisements concerning their said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the misleading and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers and periodicals, by pamphlets, circulars, and other advertising literature of general circulation, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, are the following:

"Did This New

ORANGE JUICE

and

BONKORA COCKTAIL

WAY

To Help Eliminate Wastes from the Digestive System And eating Her Fill of the Delicious Foods as Shown in the BonKora Package

MAKE HER

Lose 45 pounds Excess Fat? * * * the thing one finds many a fashionable New Yorker drinking everywhere you go these days is a BonKora Cocktail, made from Orange Juice and BonKora. Its rage seems to have started when it became noised about that a registered nurse, who could no longer work on account of her weak, fatty condition, lost 45 pounds and 10 inches off her hips with the result that she was able to go back to work again mainly by resorting to this pungent BonKora Cocktail method.

No Dangerous Drugs; No Thyroid; No Dinitrophenol—No Starvation

Drinking a glassful of chilled Orange Juice mixed with a tablespoonful of BonKora, two times a day, and eating their fill of the delicious foods, as shown in the BonKora package, it is claimed, has made many people lose from 7 to 67 pounds, and has made their waist and bust measurements go down from 3 to 11 inches. Don't delay. Test the BonKora and Orange Juice Addition to Your Reducing Program. Today! Buy a bottle of BonKora at any drug or department store today, under the maker's guarantee of satisfaction or your money back.

PAR. 4. Through the use of the statements and representations hereinabove set forth which purport to be descriptive of the therapeutic value of respondents' preparation "BonKora" and of the benefits to be derived from its use, the respondents represented directly and by implication, that said "BonKora" is a popular cocktail prepa-

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ration; that it is a preparation which, if taken as directed, will relieve obesity and reduce excess fat without the aid of a starvation diet; that the use of said preparation will reduce fat from designated parts of the body, such as the hips, waist, and bust and reduce the measurements of such parts of the body; and that said preparation contains no dangerous drugs and may be taken repetitiously with safety.

PAR 5. The foregoing advertisements and representations are grossly exaggerated and misleading.

Respondents' preparation "BonKora" is not a popular cocktail preparation. It is not a preparation which, if taken as directed, will relieve obesity and excess fat without the aid of a starvation diet. The use of said preparation will not reduce fat from designated parts of the body such as the hips, waist, and bust and will not reduce the measurements of such parts of the body. Said preparation does contain drugs which may be dangerous under certain conditions or if used repetitiously.

PAR. 6. The respondents' advertisements disseminated as aforesaid constitute misleading 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.

Although the respondents' advertisements make reference to "the delicious foods as shown in the BonKora package" and a cautionary warning appears on the package in close proximity to such list referred to in respondents' advertisements, such advertisements contain no adequate or sufficient warning to apprise the reader thereof of the dangerous possibility involved in the use of said preparation or to specifically direct the reader's attention to the cautionary statement on the package.

The preparation "BonKora" is a saline cathartic containing magnesium sulphate, supplemented by the laxative action of buckthorn bark and cascara bark, and may be used with safety only for the temporary evacuation of the bowels. Its repetitious use may be habit-forming in that the user may become dependent upon a laxative for the evacuation of the bowels. Furthermore, said advertisements are false and misleading in that they represent "BonKora" as a harmless cocktail preparation, whereas its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 7. The use by said respondents of the foregoing deceptive and misleading representations and advertisements has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and advertisements are true, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation "BonKora."

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into by counsel for respondents herein and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Battle Creek Drugs, Inc., a corporation, and Consolidated Royal Chemical Corporation, a corporation, trading as Consolidated Drug Trade Products, and as BonKora Co., or under any other name, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their product now named BonKora 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 their preparation "BonKora" is a popular cocktail preparation; that it is a preparation which, if taken as directed, will relieve or

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overcome obesity or reduce excess fat without dieting; that the use of said preparation will reduce fat from designated parts of the body such as the hips, waist and bust and reduce the measurements of such parts of the body; that said preparation contains no dangerous drugs and may be taken repetitiously with safety; or which advertisement fails to reveal 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, 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 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.

Syllabus

IN THE MATTER OF
THE HARDWOOD INSTITUTE, ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3418. Complaint, June 15, 1938¹—Decision, Feb. 20, 1942*

Where a substantial number of corporations, associated in an unincorporated organization or institute, engaged in the manufacture and interstate sale and distribution of hardwood lumber and its products; producing about 37 percent of the hardwood lumber produced in Wisconsin and Michigan, and a larger percentage of that produced in Northern Wisconsin and Northern Michigan, and, prior to acts and practices below set forth, in active and substantial competition with each other and with other manufacturers and dealers;

In pursuance of a plan to establish and maintain a system of minimum prices governing the sale of their products, and following the entering into of agreements with an individual of long experience and standing in the industry, who thereafter became manager and secretary of their said association, and pursuant to which they undertook to submit to him for his distribution among the members full details as to their respective sales and prices and related matters, and to give to him or his agent access to their records and files, and such assistance as he might request in said connection; acting in concert and cooperation with one another and with their said organization or institute—

- (a) Discussed at their meetings called by said individual from time to time, among other matters pertaining to the hardwood lumber market, available supply and demand, prices quoted and received by members and other sellers, future price quotations, and whether current quotations in price lists compiled and issued by said secretary should be changed to accord with participants' views as to prices which could be obtained;
- (b) Followed, usually, in preparing their own price lists for distribution, the new price list prepared by said secretary who was in effect their joint agent in reconciling differences of opinion, and whose list represented a meeting of their minds as to the minimum prices they should seek; and, in the case of some, prepared no separate lists, but merely inserted their own names on his list, and distributed among their salesmen copies thereof;
- (c) Placed in the hands not only of their customers but also of other manufacturers and sellers such list, which, in some instances, specified that lower prices should not be quoted or charged, and which said secretary, in addition to supplying trade journals therewith, furnished to a Minneapolis printing concern which, adding certain minor material, published it as its "Standard Price List";
- (d) Adhered to and maintained the prices set by said Standard Price List as a minimum for their quotations, and frequently a minimum for their actual sales transactions, and through said secretary questioned those who departed therefrom;

¹ Amended.