

Complaint

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IN THE MATTER OF
CODRIN CORPORATION

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

Docket 4598. Complaint, Sept. 29, 1941—Decision, May 5, 1942

Where a corporation, engaged in interstate sale and distribution of its "Magnesia S. Pellegrino" medicinal preparation; by means of advertisements sent through the mails, by radio broadcasts, and otherwise, directly and by implication—

- (a) Falsely represented that said preparation acted as a disinfectant and would normalize the digestive system, and assure perfect digestion and health; that it would, regulate the intestines, was gentle and would not irritate the intestinal walls; and that a teaspoonful taken every morning and night was a sure and final remedy against constipation and stomach acidity;

The facts being it was not of any therapeutic value except as a laxative and cathartic which would temporarily evacuate the bowels and as an antacid which would temporarily reduce stomach acidity; and

- (b) Failed to reveal facts material in the light of such representations, or with respect to consequences which might result from use of preparation in question under prescribed or usual conditions, in that a laxative or cathartic, depending upon the dose, is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis, while frequent or excessive use thereof may result in dependency on laxatives;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements were true, thereby inducing it to purchase said preparation:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Viault & Viault, of New York City, 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 Codrin Corporation, a corporation, hereinafter referred to as respondent, has 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, Codrin Corporation, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, and it has its principal office and place of business located at 333 Sixth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated as "Magnesia S. Pellegrino," in commerce between and among the various States of the United States and the District of Columbia. Respondent causes and has caused said product, when sold, to be transported from its place of business in New York to purchasers thereof located in various States of the United States, and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its medicinal preparation in commerce between and among the various States of the United States and 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 United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, 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 its said product; and has 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 statements and representations of and concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Disinfectant.

In the morning normalize your digestive system by taking a teaspoon of Magnesia S. Pellegrino.

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In the morning before coffee take a teaspoon of Magnesia S. Pellegrino and you will assure yourself of a perfect digestion and thus of perfect health.

It is a sovereign remedy against constipation and stomach acidity. * * * a teaspoonful, every morning and every evening, in half a tumblerful of water or milk, will rid you forever of constipation and stomach acidity.

A teaspoonful, every morning and every night in half a tumblerful of water or milk, is the sure, final, and sovereign remedy against constipation and stomach acidity.

Against constipation and against other intestinal disturbances you must use Magnesia San Pellegrino * * * the only purgative with efficient and sure action without irritating the intestines.

* * * only its gentleness to the intestine walls.

* * * only one tablespoonful is sufficient regulator of intestines * * *.

Infallible action against any form of constipation, * * *.

Is guaranteed to possess * * * efficiency unequalled by any other magnesia. * * * acts surely as purgative * * * acts as regulator of intestines.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that its preparation, Magnesia S. Pellegrino, acts as a disinfectant; that it will normalize the digestive system; that through its use one will be assured of perfect digestion and perfect health; that its use will regulate the intestines; that it is gentle to the intestines and that it will not irritate the intestinal walls; that it will rid one of constipation; that it will rid one of stomach acidity; and that a teaspoonful of said preparation taken every morning and every night is a sure and final remedy against constipation and stomach acidity.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation does not act as a disinfectant; it will not normalize the digestive system; its use will not assure one of perfect digestion or of perfect health; its use will not regulate the intestines; it is not gentle to the intestines and it will irritate the intestinal walls; it will not rid one of constipation; it will not rid one of stomach acidity; the taking of a teaspoonful of said preparation every morning and every night, or the frequent or continued taking of any dosage of said preparation is not a sure, final, or effective remedy against constipation and stomach acidity; nor is said preparation of any therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as an antacid which will temporarily reduce stomach acidity.

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 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, respondent's said preparation is a laxative or a cathartic, depending upon the dose, and is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, cholera, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependency on laxatives.

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

PAR. 8. The 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 subsequently served its complaint in this proceeding upon respondent Codrin Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, at a hearing before an examiner of the Commission theretofore duly designated by it, a stipulation was entered into between counsel for the respondent and counsel for the Commission whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of facts read into the record might 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 Commission might proceed upon such statement of facts and the inferences drawn therefrom to make its report, stating

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its findings as to the facts and its conclusion based thereon, and issue its order disposing of this proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts, said stipulation having been approved by the Commission; 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, Codrin Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business located at 333 Sixth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated as "Magnesia S. Pellegrino." Respondent causes and has caused said product, when sold, to be transported from its place of business in New York to purchasers thereof located in various States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in its 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, respondent has disseminated, and has caused to be disseminated, false advertisements concerning its said product by United States mails, by radio broadcasts, and by various 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 its said product; and has disseminated, and has caused the dissemination of, 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 statements and representations concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Disinfectant.

In the morning normalize your digestive system by taking a teaspoon of Magnesia S. Pellegrino.

In the morning before coffee take a teaspoon of Magnesia S. Pellegrino and you will assure yourself of a perfect digestion and thus perfect health.

It is a sovereign remedy against constipation and stomach acidity. * * * a teaspoonful, every morning and every evening, in half a tumblerful of water or milk, will rid you forever of constipation and stomach acidity.

A teaspoonful every morning and every night in a half tumblerful of water or milk, is the sure, final, and sovereign remedy against constipation and stomach acidity.

Against constipation and against other intestinal disturbances you must use Magnesia San Pellegrino * * * the only purgative with efficient and sure action without irritating the intestines.

* * * only its gentleness to the intestine walls.

* * * only one tablespoonful is sufficient regulator of intestines * * *.

Infallible action against any form of constipation, * * *.

Is guaranteed to possess * * * efficiency unequalled by any other Magnesia. * * * acts surely as purgative * * * acts as regulator of intestines.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented directly and by implication that its preparation, Magnesia S. Pellegrino, acts as a disinfectant; that it will normalize the digestive system; that through its use one will be assured a perfect digestion and perfect health; that its use will regulate the intestines; that it is gentle to the intestines and that it will not irritate the intestinal walls; that it will rid one of constipation; that it will rid one of stomach acidity; and that a teaspoonful of said preparation taken every morning and every night is a sure and final remedy against constipation and stomach acidity.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation does not act as a disinfectant; it will not normalize the digestive system; its use will not assure one of perfect digestion or of perfect health; its use will not regulate the intestines; it is not gentle to the intestines and it will irritate the intestinal walls; it will not rid one of constipation; it will not rid one of stomach acidity; the taking of a teaspoonful of said preparation every morning and every night, or the frequent or continued taking of any dosage of said preparation, is not a sure, final, or effective remedy against constipation and stomach acidity; nor is said preparation of any therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as an antacid which will temporarily reduce stomach acidity.

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

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements were true, and induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice 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 counsel for the respondent 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 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Codrin Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparation Magnesia S. Pelle-

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grino, or any other product containing the same or similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, 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

(a) Represents, directly or through inference, that said preparation is a disinfectant.

(b) Represents, directly or through inference, that the use of said preparation will normalize the digestive system, or assure perfect digestion or perfect health.

(c) Represents, directly or through inference, that said preparation will not irritate the intestines of the user, or that its use will regulate the intestines, or that it is a sure or final cure for constipation, or that said preparation is a cure or remedy or a competent or effective treatment for, or has any therapeutic value in the treatment of constipation in excess of affording temporary relief therefrom.

(d) Represents, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for stomach acidity, or has any therapeutic value in the treatment of such condition in excess of temporarily reducing stomach acidity.

(e) Represents, directly or through inference, that said preparation has therapeutic value in the treatment of any disease or condition in excess of temporarily relieving constipation and temporarily reducing stomach acidity.

(f) Fails to reveal that said preparation should not be used in cases of abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis, and, further, that its frequent or continued use may result in dependence upon laxatives: *Provided, however*, That if the directions for use, wherever they appear on the label, in the labeling, or both, contain a warning of the potential dangers in the use of said preparation as above set forth, such advertisement need contain only the statement, "CAUTION: Use Only as Directed."

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 respondent's preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to reveal, as required in paragraph 1 hereof, the dangerous consequences which may result from

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the use of said preparation or which does not in lieu of the statement of such consequences contain the affirmative cautionary statement as provided in said paragraph.

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

Syllabus

IN THE MATTER OF

GENERAL SURVEYS, INC., JOHN H. THIES, PRESIDENT
OF GENERAL SURVEYS, INC., AND G. J. DOUCETTE, DI-
RECTOR OF GENERAL SURVEYS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4554. Complaint, Aug. 4, 1941—Decision, May 7, 1942*

Where a corporation, the president thereof who was its principal owner and controlled its policies and activities, and a second individual who was a director, stockholder, and salesman thereof, engaged in sale and interstate distribution of "The American Educator Encyclopedia," sold in sets of 10 or 20 volumes, and other books, and of a "quarterly loose-leaf extension service" and "research services" contemplating the answering of customers' questions, sold in various combinations with other books and a book case at prices ranging from \$59.50 to \$99.50;

In selling their said products under the practice by which all shipments were made on orders or contracts sent in by salesmen and canvassers, and all payments except initial payment to salesmen were remitted directly to their main office—

- (a) Represented to prospective purchasers that certain items were being given free to the particular customer for some special reason, through such statements, among others, as that books which were part of a regular combination offer were free and that purchaser paid for only the loose-leaf extension service, when in fact the price was that customarily and ordinarily charged for both books and service;
- (b) Represented to prospective purchasers, including teachers, clergymen, and students about to enter a profession, that for advertising purposes the books were given free or at an especially low price because of the purchaser's alleged prominence and in order to get his testimonial for later use in sales to the general public, or for some other reason appealing to him; the facts being said books were sold at their customary and ordinary price;
- (c) Failed to inform prospective purchasers that the securing of the loose-leaf extension service material included in said combination offer entailed an additional cost of 24 cents a copy in addition to the stated price, notwithstanding agent's representation that the price included cost of such material; and
- (d) Falsely represented to prospective purchasers generally that the usual price at which the extension service and books were being offered and sold was a special price, effective for a limited period only;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and that it was securing some special advantage, and of thus inducing substantial number of members thereof to purchase their said books and services: