

Complaint

IN THE MATTER OF

SARA B. PLANT, TRADING AS CRAVEX COMPANY AND
PLANT PRODUCTS COMPANY, INC., 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 3794. Complaint, Nov. 15, 1940—Decision, June 19, 1942

Where an individual, a corporation which she organized to carry on the business theretofore conducted by her, and her two children, officers of said corporation, engaged in the interstate sale and distribution of a medicinal preparation designated "Cravex"; by means of advertisements through the mails and otherwise, directly and indirectly—

Represented that their said "Cravex" was a competent and effective treatment for alcoholism, use of which would remove a craving for whiskey, beer, wine, or other alcoholic liquors and enable a person addicted to excessive drinking to discontinue use of such liquors, and made use of the word "relieve" to designate or describe the effect of their preparation upon an alcoholic;

The facts being that use of their said preparation does not constitute such treatment for alcoholism and will not accomplish results claimed therefor, its value lying only in the after-care or building treatment, following the obtaining of an aversion or stoppage of the use of such liquors, and an elimination of the toxins produced in the system by alcohol, and then only as part of a general tonic treatment; and psychological factor, regarded as more important than the physiological by physicians, was necessarily eliminated by use of said preparation secretly, as suggested;

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

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.

Before *Mr. Miles J. Furnas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. Lynn C. Paulson, *Mr. D. E. Hoopingarner*, *Mr. William L. Pencke*, and *Mr. Merle P. Lyon* for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., and *Mr. J. P. Cain*, of Santa Monica, Calif., for respondents.

AMENDED AND SUPPLEMENTAL 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 Sara B. Plant, an individual, trading as Cravex Co., and Plant Products Co., Inc., a corporation, and its officers, James Plant and Sara B. Plant, named in

Complaint

34 F. T. C.

the caption of this amended and supplemental complaint, 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sara B. Plant, is an individual, who, until September 28, 1939, operated under the trade name of Cravex Co., and had an office and place of business at Burbank, Calif. On September 28, 1939, respondent, Sara B. Plant, together with their son, James Robert Plant, and her daughter, Marion Alice Plant, caused the business of respondent, Sara B. Plant, to be incorporated under the laws of the State of California under the name of Plant Products Co., Inc. Respondent, Plant Products Co., Inc., has its office and principal place of business at Burbank, Calif., post office box 766.

Respondent, James Plant, an individual, is secretary and treasurer and business manager of respondent, Plant Products Co., Inc., and has his office in Burbank, Calif., with respondent, Plant Products Co., Inc., aforesaid. Respondent, Sara B. Plant, is an officer of respondent, Plant Products Co., Inc., and has her office in Burbank, Calif., with the said Plant Products Co., Inc.

PAR. 2. For more than 1 year prior to September 28, 1939, respondent, Sara B. Plant, was engaged in the business of selling and distributing a medicinal preparation known as "Cravex." This respondent caused said preparation, when sold, to be transported from her place of business in the State of California to the purchasers thereof located in other States of the United States, and at all times mentioned herein prior to September 28, 1939, maintained a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business, Sara B. Plant, disseminated, and caused to be disseminated, false advertisements concerning her 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 were distributed in commerce among and between the various States of the United States; and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of her said product, and has disseminated, and has caused the dissemination of, false advertisements concerning her said product, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of

1421

Complaint

her said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Stop Drink Habit.

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for whiskey, beer or wine should be relieved. New Proven treatment—physician's prescription. Tones nerves—aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

Tones nerves—aids nature stop habit.

He won't know and soon his craving for whiskey, beer or wine should disappear.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of remedial, curative, or therapeutic properties of respondent's product, the individual respondent, Sara B. Plant, has represented, directly and indirectly, that her preparation "Cravex" is a cure or remedy for alcoholism and that it is a competent and effective treatment therefor and will remove a craving for whiskey, beer, or wine.

PAR. 4. Respondent, Plant Products Co., Inc., has at all times since its incorporation, been, and is now, engaged in the business of selling and distributing a medicinal preparation under the trade name of "Cravex" to purchasers located in the various States of the United States. Respondent, Plant Products Co., Inc., has caused, and causes, said preparation, when sold, to be transported from its place of business in the State of California to the purchasers thereof located in other States of the United States and in the District of Columbia, and at all times mentioned herein has maintained, and now maintains, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

Respondents, James Plant and Sara B. Plant, have acted as officers of respondents, Plant Product Co., Inc., and participated in the conduct of its aforesaid business and are continuing to act in that capacity, and have sold and distributed the said preparation "Cravex" to purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia, and when sales have been made, have caused said preparation to be transported from the State of California to the purchasers thereof located in the several States of the United States and in the District of Columbia, and have at all times maintained, and are now maintaining, a course of trade in said medicinal preparation in commerce

Complaint

34 F. T. C.

among and between the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its aforesaid business respondent, Plant Products Co., Inc., and its officers, have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of, false advertisements concerning its said product "Cravex," 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 various States of the United States; 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 the said product "Cravex"; and have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning the said product "Cravex," by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said product "Cravex" in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Should you have a problem of excessive drinking in your home, just put tasteless CRAVEX in his coffee, tea, liquor, beer, wine or food. New proven method—physician's prescription.

DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for whiskey, Beer, or Wine should be relieved. New, proven treatment—physician's prescription. Tones nerves, aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's product, respondents have represented and do now represent directly and indirectly, that their preparation, "Cravex," is a cure or remedy for alcoholism and that it is a competent and effective treatment therefor and will remove a craving for whiskey, beer, or wine.

PAR. 6. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondents' preparation "Cravex" is not a cure or remedy for alcoholism. Said prepa-

ration is not a competent and effective treatment for alcoholism and will not remove a craving for whiskey, beer, or wine.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the product "Cravex," 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 said statements and representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation containing drugs.

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 November 15 A. D. 1940, issued and subsequently served its amended complaint in this proceeding upon the respondents, Sara B. Plant, an individual, trading as Cravex Co., Plant Products Co., Inc., a corporation, and James Plant and Sara B. Plant, individually, and as officers, of said corporation, 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 amended complaint and the filing of respondents' answer thereto, testimony, and other evidence in support of the allegations of said amended complaint were introduced by W. L. Pencke and Merle P. Lyon, attorneys for the Commission, and in opposition to the allegations of the amended complaint by J. P. Cain, attorney for the respondents, before Miles J. Furnas and Edward E. Rear-don, trial examiners 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 upon said amended complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the amended complaint (no brief having been filed by the respondents or oral argument requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the in-

Findings

34 F. T. C.

terest 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, Sara B. Plant, is an individual, who, until September 28, 1939, operated under the trade name of "Cravex Co." and had an office and place of business at Burbank, Calif. On September 28, 1939, respondent, Sara B. Plant, together with her son James Robert Plant, and her daughter Marian Alice Plant, caused the business of the respondent, Sara B. Plant, to be incorporated under the laws of the State of California under the name of "Plant Products Company, Inc." Respondent, Plant Products Co., Inc., has its office and principal place of business at No. 1 Toluca State Drive, North Hollywood, Calif., the place of residence of the individual respondents, Sara B. Plant, and James Robert Plant, and also has a mailing address of post office box 766, Burbank, Calif.

Respondent, James Robert Plant, is an individual, and is secretary, treasurer, and business manager of respondent, Plant Products Co., Inc., and prior to September 28, 1939, was actively engaged with Sara B. Plant in the operation of the business under the trade name "Cravex Company." Respondent, Sara B. Plant, is an officer of respondent, Plant Products Co., Inc.

PAR. 2. For several years prior to September 28, 1939, respondent, Sara B. Plant, was engaged in the business of selling and distributing a medicinal preparation known as "Cravex." This respondent caused said preparation, when sold, to be transported from her place of business in the State of California to the purchasers thereof located in other States of the United States, and at all times mentioned herein prior to September 28, 1939, said respondent has maintained a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Plant Products Co., Inc., has, at all times since its incorporation, been, and is now, engaged in the business of selling and distributing said medicinal preparaton designated "Cravex" to purchasers located in various States of the United States. Respondent, Plant Products Co., Inc., has caused, and causes, said preparation, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia; and at all times mentioned herein has maintained, and now maintains, a course of trade in

said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

The individual respondents, James Robert Plant, and Sara B. Plant, have participated in and have controlled the advertising policies and business activities of said corporate respondent, Plant Products Co., Inc. Said individual respondents and the corporate respondent have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 4. In the course and conduct of its 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 product "Cravex," by 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 are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product "Cravex" by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product "Cravex" in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

1. Advertisements disseminated prior to September 28, 1939:

STOP DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. He won't know, and soon his craving for whiskey, beer, or wine should disappear. New, proven treatment—physician's prescription. Tones nerves—aids natural stop habit. Safe—doesn't upset stomach. Thousands benefited. Satisfaction guaranteed.

DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for Whiskey, Beer or Wine should be relieved. New, proven treatment—physician's prescription. Tones nerves—aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

2. Advertisements disseminated subsequent to September 28, 1939:

FOR DRINK HABIT

Excessive drinking often tends to cause jangled nerves, nervous irritability, fatigue, loss of efficiency, and weakened faculty of judgment. Should you have a problem of excess drinking in your home just put tasteless Cravex, in coffee, tea, liquor, beer, wine, or food. New, proven method—physician's prescription.

Findings

34 F. T. C.

The ingredients of Cravex are an aid in helping to build up the nerves and appetite, thereby aiding to kill the excessive craving for liquor. Cravex is safe and doesn't upset the stomach.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, respondents have represented, and do now represent, directly and indirectly, that their preparation "Cravex" is a competent and effective treatment for alcoholism and that its use will remove a craving for whiskey, beer, wine, or other alcoholic liquors and enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described, are grossly exaggerated, misleading, and untrue.

Respondents' preparation is composed of the following ingredients: calcium glycerophosphate, $1\frac{1}{2}$ grains; manganese glycerophosphate, 1 grain; caffein alkaloid, $\frac{1}{2}$ grain; with sufficient milk sugar to make each powder weigh approximately 2.21 grams. The advertising and the directions provide for the administration of one powder twice daily in the patient's coffee or other beverage.

The calcium glycerophosphate contained in respondents' preparation is a chemical compound which serves as a nerve nutriment and which is ordinarily found in the average diet. In fact, as much calcium could be obtained by drinking a glass of milk as by use of this powder. The use of manganese glycerophosphate, another ingredient of respondents' preparation, is not definitely known to the medical profession. It is sometimes believed that this ingredient serves as a nerve nutriment, but this is not the general, recognized medical opinion with reference to this ingredient. Caffein alkaloid is a derivative obtained from plants, such as coffee and tea, and is ordinarily used as a nerve and heart stimulant. The amount contained in each powder is very low, and the same reaction or result could be obtained from one cup of ordinary coffee. Milk sugar has a certain nutrient value. None of the ingredients in respondents' preparation, used either alone or in combination, would have any effect upon the craving for alcohol.

The treatment of an alcoholic patient is generally considered to be along psychological, rather than physiological, lines, and the treatment varies with the individual. Respondents' advertising generally is directed not to the alcohol addict but rather to some member of his family, with the further indication that said preparation can be administered secretly. The use of this preparation secretly in an

1421

Order

effort to treat an alcoholic, eliminates the psychological factor, which is held by physicians to be the more important in any course of treatment. No cooperation can be extended by a patient who does not know that he is undergoing treatment.

The extent to which this preparation might be of value in the treatment of an alcoholic is in the after-care or building treatment after an aversion or stoppage of the use of alcoholic liquors has been obtained and the toxins produced in the system by alcohol eliminated, and then only as an adjunct or part of a general tonic treatment.

The use of respondents' preparation under the conditions prescribed by them does not constitute a competent or effective treatment for alcoholism, and its use will not remove a craving for whiskey, beer, wine, or other alcoholic liquors, or enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors.

PAR. 6. The use by the respondents of the word "relieve" to designate or describe the effect of this preparation upon an alcoholic, has a tendency to mislead and deceive the public into the belief that the use of respondents' preparation will either permanently remove the craving for alcoholic liquors or eliminate such craving for substantial periods of time, so that eventually the liquor habit can be entirely cured or removed, when, in fact, this preparation has no therapeutic value in connection with the craving for alcoholic liquors, and its stimulating effect is of such short duration as to make this preparation of no value in the treatment of alcoholism.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the product "Cravex" 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 said representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondents' preparation containing drugs.

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 on the amended complaint of the Commission, answer of the

Order

34 F. T. C.

respondents, testimony, and other evidence taken before Miles J. Furnas and Edward E. Reardon, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief filed in support of the amended complaint; 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 respondent, Plant Products Co., Inc., a corporation, its officers, representatives, agents, and employees, and Sara B. Plant, an individual, trading as Cravex Co., and as officer and director of the corporate respondent, Plant Products Co., Inc., and James Robert Plant, individually, and as officer of said corporate respondent, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of the medicinal preparation known as "Cravex," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that respondents' preparation is a competent or effective treatment for alcoholism or that its use will relieve or remove the craving for alcoholic liquors or enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors;

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 respondents' preparation "Cravex," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the 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

WESTERN CONFECTIONERS ASSOCIATION, INC., 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 4132. Complaint, June 14, 1940¹—Decision, June 22, 1942

Where a nonprofit Association, composed of manufacturers of candies and other confections in California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, with its principal office and place of business in San Francisco; officers, directors, and trustees thereof; and various manufacturer-members who constituted a large and influential portion of the candy manufacturers in California, Washington, Utah, and Colorado, able to control or substantially influence the flow of trade in candies in their area, and prices of such products, in substantial interstate competition with others and, but for combination and conspiracy below described, with one another—

- (a) Entered into an agreement, combination or conspiracy to maintain minimum prices for their products and uniform discounts to purchasers thereof through the medium of the Association, and making use of the California Unfair Practices Act which, among other things, prohibits sale below seller's cost, as the basis of price agreements which would cover all of the sales transactions of all Association members; and in furtherance of said plan—
- (1) Undertook, through the Association, the making of certain "Cost Surveys" which involved the submission to a commercial reporting concern by members of data pertaining to items entering into the cost of manufacture for use in compiling unidentified averages; and distribution thereof by the Association to the members;
- (2) Provided in a new constitution, among other things, that no member should sell below cost—having in mind, apparently, above statute—providing, however, that a member might meet the lower prices of a competitor if not in violation "of the established cost survey"; and
- (3) Adopted said "Survey's" figures as representing the correct cost on hard mixed candy and chocolate drops, shortly after the completion of said "cost survey" on hard mixed candy, chocolate drops and pan goods (for which alone said surveys were completed), at a meeting called, at their instance apparently, by the Los Angeles city attorney, and advised Association members of such action;
- (b) Threatened with legal action manufacturers who, according to reports, were not maintaining the minimum prices thus arrived at, taking action in some cases with a view thereto, and also caused threats to be circulated generally among manufacturers that those who sold their candies at less than the cost figure adopted would be prosecuted under the said Unfair Practices Act; and
- (c) Concertedly classified purchasers as syndicates, wholesalers, jobbers, and retailers, on the basis of information supplied by manufacturers relative to their discounts; and adhered to such classification in granting discounts;

¹ Amended and supplemental.