

IN THE MATTER OF

GENE HUGHES DRUG STORES, INC., ALSO TRADING AS
SACRAMENTO PHARMACAL COMPANY; AND EUGENE
P. HUGHES

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

Docket 4316. Complaint, Sept. 17, 1940—Decision, July 6, 1942

Where a corporation and its president, engaged in interstate sale and distribution of their "SLENDODIDS" drug preparation; by advertisements in newspapers, circulars, and other advertising literature, directly and by implication—

Represented that their said preparation was a cure or remedy for obesity and constituted a safe, competent, and effective treatment therefor; and that use thereof "tones up the entire system," "Turns ugly Fat into Energy," and would relieve the body of excess fat without harmful effects;

The facts being it was not such a cure or safe, effective treatment for obesity; properties thereof were limited to effecting a reduction in weight through cathartic dehydration; and because of such action it might irritate the colon and rectum and tend to produce an irritation of the nervous system, resulting in serious injury to health;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby induce purchase thereof:

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. Edward E. Reardon*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. A. M. Mull, Jr., of Sacramento, Calif., 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 Gene Hughes Drug Stores, Inc., a corporation, also trading as Sacramento Pharmacal Co., and Eugene P. Hughes, an individual, trading as Sacramento Pharmacal Co., and as officer of Gene Hughes Drug Stores, Inc., 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gene Hughes Drug Stores, Inc., is a corporation organized, existing, and doing business under the laws of

Complaint

the State of California, with its office and principal place of business located at 500 J Street, Sacramento, Calif. Respondent, Eugene P. Hughes, is an individual and the president of the aforesaid corporation with his principal office and place of business located at 500 J Street, Sacramento, Calif. Both the individual respondent, Eugene P. Hughes, and the corporate respondent do business under the trade name of Sacramento Pharmacal Co.

PAR. 2. Respondents are now, and for several years past have been engaged in the sale and distribution of a drug preparation advertised and known as "SLENDOWDS" and as "SLENDOWDS Nu-Form Capsules," which preparation has been offered for sale and sold as a treatment for obesity. Respondents have caused said preparation, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained, a course of trade in said 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 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 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 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

DON'T BE FAT

SLENDOWDS Nu-Form Capsules

An Improved formula that tones up the entire system. Turns ugly Fat into Energy. Users say "Amazing." Reduce this Safe, Easy Way.

At leading drug stores.

HELEN—the fat girl & I met again. She took the hint & is reducing with Slendoids from Walgreens. She says if I can she can too. Lou.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out

Findings

35 F. T. C.

herein, the respondents have represented, directly, and by implication, that their preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment therefor, and that the use of said preparation will tone up the entire system, turn ugly fat into energy, and relieve the body of excess fat without harmful effects.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth are grossly exaggerated and false and misleading. In truth and in fact, respondents' preparation "SLENDOIDS," otherwise designated as "SLENDOIDS Nu-Form Capsules," is not a cure or remedy for obesity and does not constitute a safe, competent, or effective treatment therefor and its use will not tone up the entire system, turn fat into energy, or relieve the body of excess fat without harmful effects. The properties of said preparation are limited to effecting a reduction in weight because of the cathartic dehydration resulting from the use of this preparation. Because of such action the use of this preparation may irritate the colon and rectum and tend to produce an irritation of the nervous system resulting in serious injury to health.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparation, as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and that the preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is an improved formula that tones up the entire system, turns ugly fat into energy, and relieves the body of excess fat, safely and easily, and to induce, directly or indirectly, purchase by the public of respondents' said preparation.

PAR. 7. The aforesaid acts and practices of 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 September 17, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Gene Hughes Drug Stores, Inc., a corporation, also trading as Sacramento Pharmacal Co., and Eugene P. Hughes, an individual.

Findings

trading as Sacramento Pharmacal Co., and as officer of Gene Hughes Drug Stores, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

A hearing was held in this matter on June 23, 1941, at which time a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents, was read into the record in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts, without oral argument or the filing of briefs, to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding. Respondents expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and testimony and other evidence in the form of a stipulation as to the facts upon the record; 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, Gene Hughes Drug Stores, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its office and principal place of business located at 500 J Street, Sacramento, Calif. Respondent, Eugene P. Hughes, is an individual and the president of the aforesaid corporation, with his principal office and place of business located at 500 J Street, Sacramento, Calif. Both the individual respondent, Eugene P. Hughes, and the corporate respondent do business under the trade name of Sacramento Pharmacal Co.

PAR. 2. Respondents are now, and for several years past have been, engaged in the sale and distribution of a drug preparation advertised and known as "SLENDIDS" and as "SLENDIDS Nu-Form Capsules," which preparation has been offered for sale and sold as a treatment for obesity. Respondents have caused said preparation, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained, a course of trade in said 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 their aforesaid business, the respondents have disseminated, and have caused the dissemination of, false 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, 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

DON'T BE FAT
SLENDOIDS Nu-Form Capsules

An improved formula that tones up the entire system. Turns ugly Fat into Energy. Users say "Amazing." Reduce this Safe, Easy Way.
At leading drug stores.

HELEN—the fat girl & I met again. She took the hint & is reducing with Slendoids from Walgreens. She says if I can she can too. L&U.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents have represented, directly and by implication, that their preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment therefor, and that the use of said preparation will tone up the entire system, turn ugly fat into energy, and relieve the body of excess fat without harmful effects.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth, are grossly exaggerated and false and misleading. In truth and in fact, respondents' preparation "SLENDOIDS," otherwise designated as "SLENDOIDS Nu-Form Capsules," is not a cure or remedy for obesity and does not constitute a safe, competent, or effective treatment therefor, and its use will not tone up the entire system, turn fat into energy, or relieve the body of excess fat without harmful effects. The properties of said preparation are limited to effecting a reduction in weight because of the cathartic dehydration resulting from the use of this preparation. Because of such action the use of this preparation may

Order

irritate the colon and rectum and tend to produce an irritation of the nervous system, resulting in serious injury to health.

PAR. 6. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and that the preparation designated as "SLENDOWDS" and as "SLENDOWDS Nu-Form Capsules" is an improved formula that tones up the entire system, turns ugly fat into energy, and relieves the body of excess fat safely and easily, and to induce, directly or indirectly, purchase by the public of respondents' said preparation.

CONCLUSION

The aforesaid acts and practices of 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 and stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents upon the record; 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, Gene Hughes Drug Stores, Inc., a corporation, trading as Sacramento Pharmacal Co. or trading under any other name, its officers, representatives, agents, and employees, and Eugene P. Hughes, an individual, trading as Sacramento Pharmacal Co. or trading under any other name, and as officer of the corporate respondent, Gene Hughes Drug Stores, Inc., his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their preparation known as "SLENDOWDS" and as "SLENDOWDS Nu-Form Capsules," 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.

(a) That respondents' preparation is a cure or remedy for obesity or that it constitutes a safe, competent, or effective treatment therefor.

(b) That the use of respondents' preparation will tone up the entire system or turn fat into energy.

(c) That the use of respondents' preparation will relieve the body of excess fat without harmful results.

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, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

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

PEGGIE MORAN COMPANY, INC., AND IRENE
JOHNSTON, INC.

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

Docket 4415. Complaint, Dec. 13, 1940—Decision, July 7, 1942

Where two corporations, engaged in the interstate sale and distribution—principally to retail dealers, including department stores, drug stores, and beauty shops—of "Peggie Moran Savon" reducing soap, which the second, also operating a beauty shop, purchased from the first;

Acting in conjunction with each other and following a plan of cooperative advertising pursued by said first corporation under which it assisted its customers in the advertisement of said product, supplying advertising circulars and leaflets for distribution, paying a portion of the cost of advertising through allowing discounts on dealers' invoices upon the submission by the dealer of a tear sheet showing the newspaper advertisement, supplying its dealers with mats and copies for their use in newspaper advertising, and assisting them in the preparation of other newspaper advertisements—

Represented, through extensive advertisement of said soap by means of circulars and leaflets distributed among the public, and through advertisements inserted in Los Angeles newspapers of wide circulation in California and other States, directly or by implication, that their soap was an effective reducing agent through the use of which excessive flesh or fat could be removed from the body or from any particular portion or area thereof;

The facts being said soap was incapable of affecting the size or weight of the body; while Bentonite clay—the only ingredient therein for which they claimed any reducing properties—might, because of its hygroscopic action or affinity for water, withdraw small amounts thereof from the body through the skin, such amounts would be negligible; and any such hygroscopic action would also be materially lessened by reason of the substantial quantities of water used in manufacture of the soap and preparation of the lather therefrom;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said soap possessed reducing properties and values, thereby inducing it to purchase substantial quantities thereof;

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.

As respects the validity of claims in behalf of a soap represented as capable of and effective for reducing the body or certain parts thereof through use in bathing, by reason of the Bentonite clay included therein, with its hygroscopic properties or affinity for water, testimony offered in support of such claims by witnesses to the effect that they had obtained satisfactory results therefrom was insufficient to overcome the expert testimony that the soap was incapable,