

Complaint

IN THE MATTER OF

INCOME AUDIT SERVICE CORPORATION AND
FRANK H. HIBBERDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4715. Complaint, Feb. 25, 1942—Decision, July 13, 1942*

Where a corporation and its principal stockholder who controlled its practices and policies, engaged in the compilation and interstate sale and distribution of their "Income Audit Service" or bookkeeping and accounting or business record system, consisting of a bound ledger for recording business transactions, and of a certificate of service wherein they agreed, upon request, that they would prepare the Federal income tax returns of purchasers of said service and advise them with regard to income, Social Security, and other accounting questions; through the medium of the mails and through their salesmen and canvassers, directly and by implication—

- (a) Falsely represented that their said representatives were officers, agents, or representatives of the United States Government, and, in particular, of the Income Tax Unit of the Treasury, and that the purchase and use of a bookkeeping, accounting, or record system, and more particularly their own, was required under the laws of the Government or the rules, regulations, or orders of some department or agency thereof;
- (b) Falsely represented that their Income Audit Service emanated from, or was sold and distributed under the auspices of, the Government or said Income Tax Unit, that it was the only bookkeeping, accounting, or business record system approved by the Government or said Unit, and that all others in use must be removed and replaced by their own; and
- (c) Falsely represented that prospective purchasers who failed to purchase and use their said "Income Audit Service" and did not comply with requests or demands of their representatives or salesmen in connection with its sale would, as a result, subject themselves to arrest or imprisonment;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, thereby causing it, because of such mistaken belief, to purchase substantial quantities of said "Income Audit Service":

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. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. John N. Torvestad, of Brentwood, Md., and *Mr. Hyman M. Goldstein*, of Washington, D. C., for respondents.

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Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that Income Audit Service Corporation, a corporation, and Frank H. Hibberd, individually and as an officer of said Income Audit Service Corporation, 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Income Audit Service Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland. Respondent, Frank H. Hibberd, is an individual and is the principal stockholder in and an officer of respondent Income Audit Service Corporation and controls and dominates the practices and policies of the corporate respondent.

Both of the respondents have their office and place of business at 3407 Perry Street, Mount Rainier, Md.

PAR. 2. The respondent corporation is now, and for more than one year last past has been, under the supervision and control of said respondent, Frank H. Hibberd, engaged in the compilation of a so-called "Income Audit Service" and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondents have acted together and in cooperation each with the other in doing the acts and things alleged hereinafter.

Respondents cause and have caused said "Income Audit Service," when sold, to be shipped from said place of business in Maryland to the purchasers thereof located in the various States of the United States other than Maryland and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in the said "Income Audit Service" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said "Income Audit Service" comprises a bookkeeping and accounting or business records system consisting of a bound record for recording various business transactions. Included in said "Income Audit Service" is a certificate of service, wherein respondents, upon request, agree to prepare the federal income tax return of purchasers of said "Income Audit Service" and to advise subscribers with regard to income, social security tax, and other accounting questions.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said "Income Audit Service," respondents directly, indirectly, impliedly, and inferentially, through the medium of the United States mails and through methods used by representatives, salesmen, agents, and canvassers under their direction,

control, and supervision, have made many representations to purchasers and prospective purchasers in the solicitation and sale of said "Income Audit Service," among and typical of which are the following:

1. That respondents' representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

2. That the purchase and use of a bookkeeping, accounting, or business record system, and, more particularly, of respondents' said "Income Audit Service," is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

3. That respondents' "Income Audit Service" emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

4. That respondents' said "Income Audit Service" is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondents' said "Income Audit Service."

5. That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or who do not comply with the requests or demands of respondents' representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondents' said "Income Audit Service" will as a result of such failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents, or canvassers, subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondents in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. In truth and in fact, respondents' representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' said "Income Audit Service" is not necessary or required under the laws of the United States or under the rules, regulations, or orders of the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' "Income Audit Service" does not emanate from, nor is it sold and distributed under the auspices of, the United

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States Government, or any department or agency thereof. In fact, no other bookkeeping, accounting, or business record system purchased or in use need be removed and replaced by respondents' said "Income Audit Service." Prospective purchasers who do not purchase and use said "Income Audit Service" or comply with the request or demand made by respondents' representatives, salesmen, agents, and canvassers in connection with the sale of respondents' "Income Audit Service" will not, as a result of such failure to purchase and use said "Income Audit Service" or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 statements and representations are true, and to cause the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said "Income Audit Service."

PAR. 7. 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 ORDER¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 25, 1942, issued and subsequently served its complaint in this proceeding upon respondents, Income Audit Service Corporation, a corporation, and Frank H. Hibberd, individually and as an officer of said Income Audit

¹ The findings as to the facts are published as modified by order dated October 23, 1942, as follows:

This matter coming on to be heard by the Commission upon respondents' motion to delete the word "directly" from line four, paragraph 4, page 3, of the Findings as to the Facts and certain other words from the Order to Cease and Desist, and it appearing that respondents' motion is well founded insofar as it relates to the deletion of the word "directly" from line 4 of paragraph 4 of the Findings as to the Facts, but is not well founded insofar as it involves the deletion of certain words from the Order to Cease and Desist, and the Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the Findings as to the Facts issued herein on July 13th, 1942, be, and they hereby are, modified to the extent of deleting from line four of paragraph 4 of said Findings the word "directly"; and that in all other respects the Findings as to the Facts and Conclusion issued by the Commission on July 13th, 1942, remain in full force and effect.

It is further ordered, That the motion to delete from the Order to Cease and Desist issued on July 13th, 1942, certain words, to wit, "directly or through any corporate or other device" and the words "directly or by implication" be, and the same hereby is, denied.

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Service Corporation, charging them with unfair and deceptive acts and practices in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, at a hearing before an examiner of the Commission theretofore duly designated by it, a stipulation as to the facts was read into the record and certain documentary evidence introduced in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and it was agreed that the Commission may proceed upon said statement of facts and documentary evidence to make 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. The respondents expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, stipulation as to the facts, and documentary evidence; 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, Income Audit Service Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland. Respondent, Frank H. Hibberd, is an individual, and is the principal stockholder in and an officer of respondent Income Audit Service Corporation, and controls and dominates the practices and policies of the corporate respondent. Both of the respondents have their office and place of business at 3407 Perry Street, Mount Rainier, Md.

PAR. 2. The respondent corporation, under the supervision and control of said respondent, Frank H. Hibberd, is now and for more than 1 year last past has been engaged in the compilation of a bookkeeping system of service sold under the trade name "Income Audit Service," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondents have acted together and in cooperation each with the other in doing the acts and things hereinafter set out.

Respondents cause and have caused said "Income Audit Service," when sold, to be shipped from said place of business in Maryland to the purchasers thereof located in the various States of the United States other than Maryland and in the District of Columbia. Re-

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spondents maintain and at all times mentioned herein have maintained a course of trade in the said "Income Audit Service" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said "Income Audit Service" includes a bookkeeping and accounting or business records system consisting of a bound ledger for recording various business transactions. Purchasers of said "Income Audit Service" are also furnished a certificate of service, wherein respondents agree that, upon request, they will prepare the Federal income tax return of purchasers of said "Income Audit Service" and advise purchasers with regard to income, Social Security tax, and other accounting questions.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said "Income Audit Service," respondents directly, indirectly, impliedly and inferentially, through the medium of the United States mails and through methods used by representatives, salesmen, agents, and canvassers under their direction, control, and supervision, have made many representations to purchasers and prospective purchasers in the solicitation and sale of said "Income Audit Service," among and typical of which are the following:

(a) That respondents' representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

(b) That the purchase and use of a bookkeeping, accounting, or business record system, and, more particularly, of respondents' said "Income Audit Service," is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

(c) That respondents' "Income Audit Service" emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

(d) That respondents' said "Income Audit Service" is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondents' said "Income Audit Service."

(e) That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or who do not comply with the requests or demands of respondents' representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondents' said "Income Audit Service" will, as a result of such

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failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents, or canvassers, subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondents in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. In truth and in fact, respondents' representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' said "Income Audit Service" is not necessary or required under the laws of the United States or under the rules, regulations, or orders of the Income Tax Unit of the Department of the Treasury or any other department or agency of the United States Government. Respondents' "Income Audit Service" does not emanate from nor is it sold and distributed under the auspices of the United States Government or any department or agency thereof. In fact, no other book-keeping, accounting, or business record system purchased or in use need be removed and replaced by respondents' said "Income Audit Service." Prospective purchasers who do not purchase and use said "Income Audit Service" or comply with the request or demand made by respondents' representatives, salesmen, agents, and canvassers in connection with the sale of respondents' "Income Audit Service" will not, as a result of such failure to purchase and use said "Income Audit Service" or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 statements and representations are true, and to cause the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said "Income Audit Service."

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 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, Income Audit Service Corporation, its officers, representatives, agents, and employees, and Frank H. Hibberd, individually and as an officer of said Income Audit Service Corporation, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a bookkeeping system or service sold and distributed under the name, "Income Audit Service," or any bookkeeping, accounting, or business record system whether sold under the name, "Income Audit Service" or any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' agents, salesmen, or canvassers are officers, agents, or representatives of, or that they are in any manner connected with, the United States Government or any department or agency thereof.

2. That respondents' bookkeeping, accounting, and business record system or "Income Audit Service" is necessary or required under the laws of the United States or under the rules, regulations, or orders of any department or agency thereof; or that other income tax record systems or services must be replaced by respondents' said system or service.

3. That respondents' bookkeeping, accounting, and business record system or "Income Audit Service" is produced by or sold and distributed under the direction of the United States Government or any department or agency thereof.

4. That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or record keeping system will be subject to arrest or imprisonment because of their failure to purchase and use said services.

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
MAR-GOL HEALTH PRODUCTS CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4607. Complaint, Oct. 7, 1941—Decision, July 14, 1942*

Where a corporation, engaged in the manufacture and interstate sale and distribution of its "Roberta Blueberry Juice," made from the Florida "Rabbit-Eye Blueberry" by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented, directly and by implication, that its said Blueberry Juice had therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, menstruation difficulties, and diabetes;

The facts being it was nothing more than a beverage with a food value limited to that of the berries from which the juice was extracted; it had no therapeutic value in the treatment of stomach disorders and other ailments above mentioned; and reliance thereon as a treatment for diabetes might be very dangerous through causing a patient to refrain from taking proper treatment, particularly insulin;

- (b) Represented in certain of its advertising that its product contained essential organic mineral elements such as iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium, by reason of which it was of value in maintaining general health;

- (c) Represented, directly and by implication, that it was a builder and cleanser of red blood, a flushing agent which promoted cell and tissue metabolism, had great healing power and resistance-building properties, was beneficial for nerve matter, especially the heart nerve, promoted cell building and blood fluidity, acted on the glands, and made body fluid alkaline; and

- (d) Represented further, as aforesaid, that it beneficially affected maintenance of mucous and other gland secretions; that it entered into sensitive tissues, ligaments, and arterial walls, was a powerful antiseptic and would increase energy; and was effective in stimulating the liver, promoting bile flow, beautifying the complexion, in bone and teeth building, and tissue repair;

The facts being it contained no organic mineral elements in sufficient quantities to supply any mineral deficiency; and did not have the properties, and would not accomplish the results claimed therefor as above set forth; and

- (e) Falsely represented that it was effective as a tonic, eliminator, alkalizer, body builder, regulator, and as an antiseptic and beautifier;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing purchase of substantial quantities of said product because of such mistaken belief:

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. Arthur F. Thomas, trial examiner.

Mr. Joseph C. Fehr and Mr. Carrel F. Rhodes for the Commission.

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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 Mar-Gol Health Products 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, Mar-Gol Health Products Corporation, is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 203 North Humphrey Avenue in the city of Oak Park, in the State of Illinois.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a product designated as "Roberta Blueberry Juice," 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 Illinois to purchasers thereof located in various States of the United States and the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product 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 products, 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 products; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning

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its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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:

- Drink Roberta Blueberry Juice * * * as a body builder * * *;
- Beneficial for sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis (sic), anemia, arthritis, liver trouble and menstruation difficulties * * *. Highly recommended for starch restricted diet cases;
- Roberta Blueberry Juice * * * contains essential organic mineral elements * * * iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur and calcium;
- It's pleasant to have your health restored with Roberta Blueberry Juice, a natural health food— * * *;
- Learn the secret of health . . . Get well and stay well. Drink Roberta Blueberry Juice;
- These blueberries, luscious and unsurpassed in therapeutic, health restorative value;
- Use as a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, beautifier;
- A flushing agent, promotes cell and tissue metabolism, has great healing power and builds resistance;
- Agent of life and growth. Beneficial for nerve matter. Especially upon the Heart nerve;
- Promotes cell building, blood fluidity, makes body fluid alkaline, acts on glands;
- Is responsible for the maintenance of mucus and gland secretions;
- Enters into sensitive tissues, ligaments, arterial walls. It's a powerful antiseptic, it increases energy;
- Stimulates the liver, promotes bile flow, and beautifies the complexion;
- Essential and is responsible for bone and teeth building and tissue repair;
- A red blood builder and cleanser.

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 food and therapeutic properties of respondent's product, designated as "Roberta Blueberry Juice," respondent represents, directly and by implications, that said product is a body builder; that its use has a beneficial effect upon sour stomach, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties; that it is highly effective and beneficial for use in cases of starch restricted diet; that it contains essential organic mineral elements, including the mineral elements of iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium; that it is a natural health-restoring food; that its use is the secret of getting well and

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staying well; that it is unsurpassed in therapeutic, health-restoring value; that it is a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, and beautifier; that it is a flushing agent which promotes cell and tissue metabolism, builds resistance and has great healing power; that it is an agent of life and growth which is beneficial for the nerves, and especially the heart nerve; that it promotes cell building, blood fluidity, makes body fluid alkaline, and acts on glands; that it is responsible for the maintenance of mucus and secretions; that it enters into sensitive tissues, ligaments, and arterial walls and increases energy; that it is a powerful antiseptic; that its use stimulates the liver, promotes bile flow, and beautifies the complexion; that its use is essential and that its use promotes bone, teeth building and tissue repair; and that it is a red blood builder and cleanser.

PAR. 5. The significant 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 product designated as "Robert's Blueberry Juice" is not a body builder and its use will not have a beneficial effect upon sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties. Said product is not highly effective and beneficial for use in cases of starch restricted diet, and because of its sugar content, its use may be dangerous to the health of one suffering from diabetes or one whose diet is restricted in the use of starch. Said product does not contain, in significant amounts, the essential organic minerals, including iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium. Said product is not a natural health-restoring food and its use is not the secret of getting well and staying well. Said product has no therapeutic or health restorative value in excess of its mild laxative properties. Said product is not a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, or beautifier; it is not a flushing agent and it does not promote cell and tissue metabolism; it has no value in building resistance and it has no healing power. Said product is of no significant value in promoting life and growth, nor is it beneficial for the nerves, including the heart nerve. Said product does not promote cell building, blood fluidity, nor does it make the body fluid alkaline, nor does it act on glands of the body. The use of said product will not be of any significant value in the maintenance of mucus and gland secretions. It will not enter into sensitive tissues, ligaments, and arterial walls, or increase energy in excess of the energy derived from its sugar content. It is not a powerful antiseptic;

nor an antiseptic in any sense of the word. The use of said product will not stimulate the liver, promote bile flow, or beautify the complexion. Its use is not essential and will not materially promote bone and teeth building or tissue repair, nor is it a red blood builder or cleanser.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said product, disseminated as aforesaid, has had and now has 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 product.

PAR. 7. The acts and practices of 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 October 7, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Mar-Gol Health Products 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, testimony and other evidence in support of the allegations of said complaint were introduced by J. C. Fehr, an attorney for the Commission, and in opposition to the allegations of the complaint by Martha S. Goll, vice president and treasurer of respondent corporation, before Arthur F. Thomas, a trial examiner 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral argument before the Commission; 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, Mar-Gol Health Products Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 203 North Humphrey Avenue in the city of Oak Park, in the State of Illinois. Respondent is engaged in the manufacture and in the sale and distribution of a fruit-juice product designated as "Roberta Blueberry Juice," in commerce between and among the various States of the United States and in the District of Columbia. Respondent's blueberry juice is made from a type of blueberry known as "Rabbit-Eye Blueberry," which is grown by the respondent in the State of Florida and processed in the plant of the respondent located at Crest View, Fla. Respondent causes, and has caused, said product, when sold, to be transported from its place of business in the State of Illinois or from its processing plant in the State of Florida, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, 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 and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Drink Roberta Blueberry Juice as a body builder.

Beneficial for sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties, as well as a complexion beautifier. Highly recommended for starch restricted diet cases.

Physicians recommend it highly for anemia, arthritis, diabetes, and ulcer.

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Roberta Blueberry Juice, a food containing essential organic mineral elements.

FRUIT IRON, a red blood builder, and cleanser.

FRUIT POTASSIUM, a flushing agent, promotes cell and tissue metabolism, has great healing power and builds resistance.

FRUIT PHOSPHORUS, agent of life and growth.

Beneficial for nerve matter, especially upon the heart nerve.

FRUIT MAGNESIUM promotes cell building, blood fluidity, makes body fluid alkaline, acts on glands.

FRUIT SODIUM is responsible for the maintenance of mucous and gland secretions.

FRUIT SILICON enters into sensitive tissues, ligaments, arterial walls. Is a powerful antiseptic, increases energy.

SULPHUR stimulates the liver, promotes bile flow, and beautifies the complexion.

CALCIUM, essential and is responsible for bone and teeth building and tissue repair.

Use as a tonic beautifier, eliminator, alkalizer, builder, regulator, antiseptic, beautifier.

These blueberries, luscious and unsurpassed in therapeutic, health-restorative value, are grown in Florida.

ROBERTA

A food containing essential organic mineral elements, such as calcium, magnesium, sodium, potassium, phosphorus, chlorine, sulphur, iron, and manganese.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, both directly and by implication, that its blueberry juice, designated "Roberta Blueberry Juice," has therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, menstruation difficulties, and diabetes.

In certain of its advertising disseminated as hereinabove set forth, the respondent represents that its product contains essential organic mineral elements, such as iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium, and that by reason of the existence of these organic mineral elements, its product has properties of value in maintaining the general health of the user of said product. In this connection the respondent represents, both directly and by implication, that its product is a builder and cleanser of red blood; that it is a flushing agent which promotes cell and tissue metabolism and has great healing power and resistance-building properties; that it is beneficial for nerve matter, especially upon the heart nerve; that it promotes cell building, blood fluidity, acts on the glands, and makes body fluid alkaline; that it has properties beneficially affecting maintenance of mucous and other gland secretions; that it enters into

sensitive tissues, ligaments, and arterial walls and is a powerful antiseptic and will increase energy; that it has properties effective in stimulating the liver, promoting bile flow, and beautifying the complexion; and that it has properties effective in bone and teeth building and tissue repair.

It is further represented by the respondent that the use of this product is effective as a tonic, eliminator, alkalizer, body builder, regulator, and as an antiseptic and beautifier.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Respondent's blueberry juice is a fruit juice composed entirely of juice squeezed out of the leaves and berries, to which no sugar or other ingredients have been added. This fruit juice is nothing more than a beverage having a food value limited to that of the berries from which the juice is extracted. It has no therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, or menstruation difficulties.

Respondent's product contains an ingredient known as myrtillin, which is one of the natural dye substances contained in blueberries and also in the leaf of the plant. A number of years ago this ingredient was thought to have some beneficial value in the treatment of diabetes. However, subsequent research has developed that myrtillin has no therapeutic value in the treatment of diabetes and is not recognized as a therapeutic agent at the present time by competent medical authority.

There is no known cure for diabetes. The treatment consists of an effort to compensate for the power which the body has lost to regulate the blood sugar level by regulating the diet so that not too big a load is put upon the body at any one time in regard to the handling of sugar and by giving insulin to increase the body's power to handle sugar. There is no active ingredient in respondent's blueberry juice which has any therapeutic effect in diabetic cases or which might in any way supply or supplant the use of insulin. In fact, a reliance upon respondent's blueberry juice as a treatment for diabetes might be very dangerous, since reliance upon this product might cause a patient to refrain from taking proper treatment, particularly the use of insulin.

Respondent's product does not contain any organic mineral elements in quantities sufficient to supply any mineral deficiency or to accomplish any of the results claimed for this product by the respondent. It is not a builder and cleanser of red blood or a flushing agent which promotes cell and tissue metabolism and does not have great healing power or resistance-building properties. The use of this product is not bene-

ficial for nerve matter or the heart nerve, and it will not promote cell building, blood fluidity, or make the body fluid alkaline. It does not have any beneficial action on the glands and has no properties which beneficially affect maintenance of mucous and other gland secretions. This product is not a powerful antiseptic, will not increase energy, or enter into sensitive tissues, ligaments, and arterial walls. This product has no properties effective in stimulating the liver, promoting bile flow, or beautifying the complexion and is of no value in bone and teeth building or tissue repair.

Respondent's product is not effective as a tonic, eliminator, alkalizer, body builder, or regulator and has no value as an antiseptic or beautifier.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said product, 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 product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence taken before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mar-Gol Health Products Corp., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connec-

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tion with the offering for sale, sale, or distribution of its fruit juice product known as "Roberta Blueberry Juice," or any other product 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 respondent's product has any properties or value other than that of a beverage having a food value limited to that of the blueberries from which the juice is extracted,

(b) That respondent's product has any therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, or menstrual disorders,

(c) That respondent's product has any therapeutic value in the treatment of diabetes,

(d) That respondent's product contains any organic mineral elements in quantities sufficient to supply any mineral deficiency,

(e) That respondent's product is a builder and cleanser of red blood, or that it is a flushing agent which promotes cell and tissue metabolism, or that it has great healing power or resistance-building properties,

(f) That respondent's product is beneficial for nerve matter, especially upon heart nerves, or that it promotes cell building, blood fluidity, or makes body fluid alkaline,

(g) That respondent's product acts on the glands or that it has properties beneficially affecting maintenance of mucous and other gland secretions,

(h) That respondent's product enters into sensitive tissues, ligaments, and arterial walls, or is a powerful antiseptic, or that it will increase energy,

(i) That respondent's product has properties effective in stimulating the liver, promoting bile flow, beautifying the complexion, building bone and teeth, or in repairing tissue,

(j) That the use of respondent's product is effective as a tonic, eliminator, alkalizer, body builder, regulator, or as an antiseptic or beautifier;

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 respond-

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

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.

IN THE MATTER OF

JACOB SWIMMER, DOING BUSINESS AS NATIONAL
LACQUER MANUFACTURING CO. AND NATIONAL
TITANIUM CO.

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

Docket 4088. Complaint, Apr. 12, 1940—Decision, July 20, 1942¹

Where an individual, engaged in the interstate sale and distribution of re-conditioned paint which he obtained as waste or salvage material resulting from use of a spray gun by manufacturers of automobiles, electric refrigerators, and other metal products, and reclaimed through the adding of solvents and removal of impurities—

- (a) Represented, by means of sales letters and advertising circulars which were given wide distribution, that the regular and customary price of his paint was \$3.65 per gallon, and that the quoted price thereof of \$1.55 constituted a special, reduced, and sacrifice price;

The facts being said last figure was his usual and customary selling price, and while the manufacturing concerns from whom he obtained his waste material might have paid approximately the higher price for the original paint, he never sold his reconditioned product at any price approaching such figure;

- (b) Represented that he maintained warehouses at numerous points throughout the United States, one of which was located near the prospective purchaser, and that the quantity of paint available from such warehouse at the quoted price was limited to the specific amount mentioned in his letter;

The facts being he had no warehouses other than that maintained by him in Vernon, Calif., in connection with his processing plant, from which he customarily filled the order, and it was only in exceptional cases that he was able to fill an order with a quantity of paint already in the purchaser's vicinity; and contrary to the implications in his said letter referring to "100 gallons" or some other specific amount, he was prepared to and did fill all orders received, at said purported "sacrifice price";

- (c) Falsely represented that his said product was "fresh stock" made entirely from new and unused materials, and obtained direct from the original manufacturer; and

- (d) Failed to reveal, either in his letters or other advertising material or on the labels affixed to the containers, that said product was reclaimed and reconditioned;

With tendency and capacity to mislead and receive a substantial portion of the purchasing public with respect to the nature and value of said product, thereby causing it to purchase substantial quantities thereof as a result of such mistaken belief;

¹ Modified order, published herewith, was made as of September 18, 1942.