

IN THE MATTER OF
BAER LABORATORIES, INC.

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

Docket 4686. Complaint, Jan. 29, 1942—Decision, Sept. 17, 1942

Where a corporation, engaged in the preparation, packing, and interstate sale and distribution of its "Sulfuraid-21" medicinal preparation; by means of advertisements in newspapers and other periodicals, and by booklets and other advertising literature, including purported testimonials, directly and through inference—

- (a) Falsely represented that its said product, when used in hot baths, was an effective relief, preventive, and cure for muscular, articular, and ligamentary pain, and all other pain except headaches, including that due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; and pain from rheumatism, arthritis, neuritis, gout, lumbago, and nervous exhaustion; and
- (b) Falsely represented that in such hot baths, sulphur was absorbed from the water through the skin and mucous membrane and thus had a general pharmacological effect; that said preparation in hot water tended to make one perspire more quickly and freely and aided a more rapid elimination of the body's waste products and the counteraction of overacidity in the body; and that "Sulfuraid-21" was the first successful effort to create sulphur in solution;

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

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. Webster Ballinger*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Emanuel B. Morganstern, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Baer Laboratories, Inc., 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:

Complaint

PARAGRAPH 1. Respondent, Baer Laboratories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 30 East Twentieth Street, in the city of New York, State of New York. Said respondent is now, and for more than 1 year last past has been, engaged in the preparation, packing, sale, and distribution of a medicinal product designated by respondent as "Sulfuraid-21."

PAR. 2. Respondent causes its said product, when sold, to be transported from its place of business in the State of New York 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 "Sulfuraid-21" 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product "Sulfuraid-21" by the 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 said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers and other periodicals, and by booklets and other advertising literature distributed among purchasers and prospective purchasers, are the following:

Rheumatism, arthritis, neuritis or gout relieved or you pay nothing!

New Scientific Achievement.

You know, or have heard, how the world famous natural Hot Sulphur Springs Baths of this country and Europe have relieved persons of the tortures of Rheumatism, Arthritis, Neuritis, Gout, Lumbago, Nervous Exhaustion, etc., after all other means failed.

Sulphur in SOLUTION which hitherto defied man's efforts to produce is now an accomplished fact.

Undoubtedly, the most effective and yet the most economic treatment for relief of arthritic pains is a hot sulphur bath at home.

Medical research has delved to some extent into the therapeutic action and pharmacological value of these baths. and while much still remains to be done

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in this field, evidence of their general efficaciousness for relief of rheumatic diseases and other affections is established beyond the shadow of a doubt.

One of the most characteristic effects of sulphur water is probably the soothing of pain due to the exhausting sedative action of H_2S .^{*} Sulphur water assuages all kinds of pain, except headaches, regardless of the cause or origin. They not only stop muscular, articular and ligamental pain, but pain due to rupture of muscles, contusions, neuralgia, tubes and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period, etc. One active factor in the soothing of pain is doubtless heat, but here it is not the only factor. Every sedative alleviates at the same time, since sedative and analgesic effects are closely connected, and sulphur water probably owes its effect of alleviating pain to the sedative effect of H_2S apart from heat. Thus we see that even in the alleviation of pain, sulphur baths do not merely act as a local stimulus on the body surface. Sulphur is absorbed from the water through the skin and mucous membrane and exerts a general pharmacological effect.

The name given this newly-discovered product is SULFURAID-21.

In this connection it is important to remember that inhalation of the sulphur vapors emitted by these baths, tends to have a cleansing action on the passages of the nose and throat; aids in relieving congestion in these parts and helps make breathing easier. Anyone taking these baths is sensible of this pleasant, clarifying effect.

The action of the sulphur in solution in hot water tends to make one perspire quickly and freely, and thus aid more rapid elimination of the body's waste products and counteract overacidity.

As has already been shown by one medical authority whom we quoted, sulphuretted hot water baths probably owe their powers of alleviating pain, apart from heat, to the sedative effect of the sulphur, which is absorbed to a degree and is, therefore more than merely a local stimulus on the body surface. It is empirically known that absorption of the sulphur is effected through the skin and through inhalation of its vapors.

Among the noticeable effects of hot baths with SULFURAID-21, aside from allaying painful symptoms, is the delightful feeling of refreshment usually following them; the easing of nervous tension; the improved elasticity of stiffened joints; the sound, restful sleep they help induce, and the more buoyant and rested feeling they impart the morning after.

Occasionally, more than one complete course of 21 baths may be required, as those who visit the Spas have found. In the majority of cases, the full course of SULFURAID-21 baths should be sufficient for all purposes. To help prevent recurrence of the aches and pains, it is wise, however, to continue taking a hot SULFURAID bath once every ten days.

And in addition certain commendatory expressions purporting to have come from users of the product, typical of which are the following:

I prescribed your SULFURAID-21 for clinical test on my Mother, who has been suffering from a very severe rheumatic for the past 25 years or more. I can, with assurance, say that it has helped her a good deal. She tells me it has done more good for her than the baths she took at Saratoga and Mt. Clemens. She did observe that the daily baths were too weakening because of the rapid loss of body fluids. When she began to take the baths two or three times a week, the results were more favorable. I do not hesitate to prescribe your product and recommend it very highly.

When one has been rheumatic for as many years as I have, and tried almost everything that offered the slightest hope for relief with little or no success, you will hardly blame me for being skeptical at first over what SULFURAID-21 could do for me. Were it not for the fact that I learned from a friend how greatly she was helped by taking the baths at Aix-le-Bains in France, I would probably still be in ignorance of what hot sulphur baths could do for a person in my condition. I completed your course of 21 baths three months ago. Since then I have had no pain at all, even during wet weather, except for an occasional slight feeling of discomfort, which passes almost as quickly as it comes. Your Sulfuraid-21 has proved a boon to me. With this help for my future defense against such suffering, I can look forward to enjoying life much more fully than I have. Does it not make you happy, too, to know how much your hot sulphur baths help? With all good wishes for your success, I am

Cordially yours.

PAR. 5. Through the use of the foregoing representations and quotations, and others similar thereto, not specifically set out herein, the respondent represents, and has represented, directly and through inference, that its said product "Sulfuraid-21" when used in hot baths, is an effective relief, preventative, and cure for muscular, articular, and ligamental pain, and all other pain except headaches, including pain due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; pain from rheumatism, arthritis; neuritis, gout, lumbago, and nervous exhaustion; that as a result of the use of said preparation in hot water baths, sulphur is absorbed from the water through the skin and mucous membrane and thus has a general pharmacological effect; that inhalation of sulphur vapors emitted from hot baths containing "Sulfuraid-21" has a cleansing action on air passages of the nose and throat and aids in relieving congestion in these parts; that the action of said preparation in hot water is such that it tends to make one perspire more quickly and freely and aids a more rapid elimination of the body's waste products and the counteraction of over-acidity in the body; and that "Sulfuraid-21" is the first successful effort to create sulphur in solution.

PAR. 6. The aforesaid representations are grossly exaggerated, false, and misleading and constitute false advertisements. In truth and in fact respondent's said product "Sulfuraid-21" when used in hot baths, is not an effective relief, preventative or cure for muscular, articular, or ligamental pain or for pain due to rupture of muscles; contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; or for pain caused by rheumatism, arthritis, neuritis, gout, lumbago, or nervous exhaustion, or any other pain. The use of said preparation in hot water baths will not result in sulphur being absorbed from the water through the skin and mucous membrane, and will not exert a general

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pharmacological effect on the body. The inhalation of sulphur vapors of hot baths containing "Sulfuraid-21" does not have a cleansing action on air passages of the nose and throat and does not aid in relieving congestion in these parts of the body, but may have a contrary effect. The addition of said preparation to hot water bath will not, because of such addition, tend to make a person perspire more quickly or freely, and will not aid more rapid elimination of the body's waste products or counteract acidity in the body. "Sulfuraid-21" does not represent the first successful effort to create sulphur in solution. Moreover, said preparation when used in hot baths is of no therapeutic effect in the treatment of any disease or condition of the human body.

PAR. 7. The use by respondent of said false and misleading advertisements with respect to its said product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, cause a substantial portion of the purchasing public to believe that respondent's product possesses therapeutic properties and values which it does not in fact possess, and has had, and now has, the tendency and capacity to, and does, induce such portion of the purchasing public to purchase substantial quantities of said product as a result of such mistaken and erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 29, 1942, issued, and on January 30, 1942, served its complaint in this proceeding upon respondent, Baer Laboratories, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of said complaint, the filing of respondent's answer, and the taking of testimony and evidence thereunder, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence taken thereunder, and the substitute answer, 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, Baer Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 30 East Twentieth Street, in the city of New York, State of New York. Said respondent is now, and for more than 1 year last past has been engaged in the preparation, packing, sale, and distribution of a medicinal preparation designated by respondent as "Sulfuraid-21."

PAR. 2. Respondent causes its said product, when sold, to be transported from its place of business in the State of New York 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, "Sulfuraid-21" 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product "Sulfuraid-21" by the 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 said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce as commerce is defined in the Federal Trade Commission Act.

Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers and other periodicals, and by booklets and other advertising literature distributed among purchasers and prospective purchasers, are the following:

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Undoubtedly, the most effective and yet the most economic treatment for relief of arthritic pains is a hot sulphur bath at home.

Medical research has delved to some extent into the therapeutic action and pharmacological value of these baths, and while much still remains to be done in this field, evidence of their general efficaciousness for relief of rheumatic diseases and other affections is established beyond the shadow of a doubt.

One of the most characteristic effects of sulphur water is probably the soothing of pain due to the exhausting sedative action of H_2S . Sulphur water assuages all kinds of pain, except headaches, regardless of the cause or origin. They not only stop muscular, articular and ligamental pain, but pain due to rupture of muscles, contusions, neuralgia, tubes and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period, etc. Every Sedative alleviates at the same time, since sedative and analgesic effects are closely connected, and sulphur water probably owes its effect of alleviating pain to the sedative effect of H_2S apart from heat. Thus we see that even in the alleviation of pain, sulphur baths do not merely act as a local stimulus on the body surface. Sulphur is absorbed from the water through the skin and mucous membrane and exerts a general pharmacological effect.

The name given this newly-discovered product is SULFURAID-21.

The action of the sulphur in solution in hot water tends to make one perspire quickly and freely, and thus aid more rapid elimination of the body's waste products and counteract overacidity.

As has already been shown by one medical authority whom we quoted, sulphuretted hot water baths probably owe their powers of alleviating pain, apart from heat, to the sedative effect of the sulphur, which is absorbed to a degree and is, therefore, more than merely a local stimulus on the body surface. It is empirically known that absorption of the sulphur is effected through the skin and through inhalation of its vapors.

Among the noticeable effects of hot baths with SULFURAID-21, aside from allaying painful symptoms, is the delightful feeling of refreshment usually following them; the easing of nervous tension; the improved elasticity of stiffened joints; the sound restful sleep they help induce, and the more buoyant and restful feeling they impart the morning after.

Occasionally, more than one complete course of 21 baths may be required as those who visit the Spas have found. In the majority of cases, the full course of SULFURAID-21 baths should be sufficient for all purposes. To help prevent recurrence of the aches and pains, it is wise, however, to continue taking a hot SULFURAID bath once every ten days.

And in addition certain commendatory expressions purporting to have come from users of the product, typical of which are the following:

I prescribed your SULFURAID-21 for clinical test on my Mother, who has been suffering from a very severe rheumatic for the past 25 years or more. I can, with assurance, say that it has helped her a good deal. She tells me it has done more good for her than the baths she took at Saratoga and Mt. Clemens. She did observe that the daily baths were too weakening because of the rapid loss of body fluids. When she began to take the baths two or three times a

week, the results were more favorable. I do not hesitate to prescribe your product and recommend it very highly.

When one has been rheumatic for as many years as I have, and tried almost everything that offered the slightest hope for relief with little or no success, you will hardly blame me for being skeptical at first over what SULFURAID-21 could do for me. Were it not for the fact that I learned from a friend how greatly she was helped by taking the baths at Aix-le-Bains in France, I would probably still be in ignorance of what hot sulphur baths could do for a person in my condition. I completed your course of 21 baths three months ago. Since then I have had no pain at all, even during wet weather, except for an occasional slight feeling of discomfort, which passes almost as quickly as it comes. Your Sulfuraid-21 has proved a boon to me. With this help for my future defense against such suffering, I can look forward to enjoying life much more fully than I have. Does it not make you happy too, to know how much your hot sulphur baths help? With all good wishes for your success, I am

Cordially yours,

PAR. 4. Through the use of the foregoing representations and quotations and others similar thereto, not specifically set out herein, the respondent represents, and has represented, directly and through inferences, that its said product "Sulfuraid-21," when used in hot baths, is an effective relief, preventative, and cure for muscular, articular, and ligamental pain, and all other pain except headaches, including pain due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; pain from rheumatism, arthritis, neuritis, gout, lumbago, and nervous exhaustion; that as a result of the use of said preparation in hot-water baths, sulphur is absorbed from the water through the skin and mucous membrane and thus has a general pharmacological effect; that the action of said preparation in hot water is such that it tends to make one perspire more quickly and freely and aids a more rapid elimination of the body's waste products and the counteraction of over acidity in the body; and that "Sulfuraid-21" is the first successful effort to create sulphur in solution.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading and constitute false advertisements. In truth and in fact respondent's said product "Sulfuraid-21," when used in hot baths, is not an effective relief, preventative, or cure for muscular, articular, or ligamental pain, or for pain due to rupture of muscles, contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains or articular rheumatism of women during their climacteric period; or for pain caused by rheumatism, arthritis, neuritis, gout, lumbago, or nervous exhaustion, or any other pain. The use of said preparation in hot-water baths will not result in sulphur being absorbed from the water through the skin and mucous membrane and will not exert a general pharmacological effect on the body. The addition of said preparation

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to hot-water baths will not, because of such addition, tend to make a person perspire more quickly or freely, and will not aid more rapid elimination of the body's waste products or counteract acidity in the body. "Sulfuraid-21" does not represent the first successful effort to create sulphur in solution; moreover, said preparation, when used in hot baths, is of no therapeutic effect in the treatment of any diseases or diseased condition of the human body.

PAR. 6. The use by the respondent of said false and misleading statements, representations, and advertisements with respect to its said product, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and advertisements were true and has had the tendency and capacity to, and has induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product "Sulfuraid-21."

CONCLUSION

The aforesaid acts and practices of 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, the testimony and evidence offered and received thereunder, and the substitute answer of the respondent, in which substitute answer the respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of the said Federal Trade Commission Act.

It is ordered, That the respondent, Baer Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation known as "Sulfuraid-21," or any 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:

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1. Disseminating or causing to be disseminated any advertisements:

(a) by means of the United States mails, or

(b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that its preparation "Sulfuraid-21" or any like or similar preparation, when used in hot water baths, is an effective relief, preventative or cure for rheumatism, arthritis, neuritis, gout, lumbago or nervous exhaustion, or for muscular, articular or ligamental pain, or for pain due to rupture of muscles, contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains, or articular rheumatism of women during their climacteric period; or that as a result of the use of "Sulfuraid-21" in hot water baths, sulphur is absorbed from the water through the skin and mucous membranes and thus has a general pharmacological effect on the human body or that the addition of said preparation to hot water, because of such addition, tends to make a person perspire more quickly or freely and aids a more rapid elimination of the body's waste products and the counteraction of acidity in the body; or that "Sulfuraid-21" is the first successful effort to create sulphur in solution or when used in hot baths possesses any therapeutic effect in the treatment of any disease or diseased condition of the human body.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said "Sulfuraid-21" which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

J. E. MILLER, DOING BUSINESS AS KONDI COMPANY

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

Docket 3217. Complaint, Aug. 27, 1937—Decision, Sept. 21, 1942

Where an individual, engaged in the competitive interstate sale and distribution of his "Kondi Worm Specific and Conditioner" for dogs; by means of advertisements in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature—

- (a) Represented that his said preparation would expel or destroy all intestinal parasites in dogs, including hook, tape, and round worms, in from 5 to 30 minutes; the facts being that in the treatment of worms in dogs the anthelmintic used must be specific in action, as one drug will usually remove or destroy only one type of worm; and product in question, containing powdered areca nut and santonin, constituted a satisfactory anthelmintic only with reference to the taenia and dipylidium type of tapeworm, was only 50 percent effective for large roundworms, and 25 percent for hookworms, and had no value in the removal of whipworms;
- (b) Represented that his said product was effective in the treatment of distemper and running and barking fits; the facts being no ingredient in product in question, including the drug salol, has ever been recognized by the veterinary profession as having any value in the treatment of distemper, caused by a filterable virus, for treatment of which veterinary science has thus far been unable to find any effective drug or combination of drugs; and product in question would not correct any dietary deficiency with which said profession associates running and barking fits;
- (c) Represented that such product was effective in treating dogs that were out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc.; the facts being that dog's condition, which may be due to a large number of causes, may not be remedied by any one drug or combination thereof, and said product, with no ingredient indicating any tonic effect, was not a conditioner for dogs due to fact alone that it might remove tapeworms or partially remove roundworms; and was not effective in treating dogs out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc., which indicate anemia, possibly caused by hookworm, and for removal of which product had little value; and
- (d) Represented that product in question would antiseptically cleanse the intestinal tract, and was as harmless to dogs as castor oil; the facts being that ingredient salol is without value for treatment of intestinal infection; any drug or combination of drugs with sufficient strength to cleanse the digestive tract antiseptically would kill the dog before it would accomplish such purpose; ingredient areca nut is purgative in action and also produces depression and nausea; and product in question was not a harmless preparation or one that could be indiscriminately administered;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby