

IN THE MATTER OF
DI-FUNCTION COMPANY, INC.

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

Docket 4666. Complaint, Jan. 8, 1942—Decision, Nov. 2, 1942

Where a corporation, engaged in the manufacture and sale and distribution of its "Di-Function" preparation for diabetes; by means of advertisements through the mails, in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, which included reproductions of purported testimonials and which were distributed in commerce among various states and by radio broadcasts heard by listeners therein, and by other means—

- (a) Represented, directly or by implication, that its said "Di-Function" was an effective treatment which would cure sugar diabetes, revive the glands of the pancreas so that they would produce sufficient insulin for the body's needs, cure long-standing, severe cases of diabetes, and make possible the resumption of the regular diet, discontinuance of all medicines, and the enjoyment of a normal healthy life;

The facts being said preparation was of no therapeutic value in the treatment of any disease or condition; and

- (b) Failed to reveal facts material in the light of such representations and with respect to consequences which might result from the use of said preparation under usual or prescribed conditions, in that said advertisements failed to reveal that the only diabetic treatment recognized as competent consists of a regulated diet, with or without the supervised administration of insulin, following which a diabetic may live out his normal life; whereas, if induced by false advertisements to abandon such treatment or fail to take advantage thereof, his diabetic condition will become worse and his health and life be endangered;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said statements were true, thereby inducing purchase of said preparation:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. John M. Russell and *Mr. Edw. W. Thomerson* for the Commission.

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 Di-Function Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that

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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, Di-Function Co., Inc., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2233 North Main Street, Fort Worth, Tex.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling and distributing a preparation designated as "Di-Function" and advertised as a treatment for diabetes.

PAR. 2. In the course and conduct of its business aforesaid, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, 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 the 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 preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

* * * Diabetes is caused, in the opinion of medical experts, by the failure of certain glands in the pancreas to do their normal work, which is the excretion of natural insulin. Some people say that these glands are dead or destroyed, and that the only way a diabetic can keep alive is to continue to furnish the body with the necessary insulin from the outside, by use of a needle. However, it is my opinion that these glands are not dead, but are merely lying dormant. For some reason, they have ceased to function, and need some food and stimulation to cause them to become active again. I believe that my medicine is this necessary element to these glands to make them become active again. They grow, under the influence of DI-FUNCTION, until they are again in a strong

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enough condition to produce the insulin which is necessary to the human body. At that time, diabetes is gone, and the sufferer is cured. * * *

DI-FUNCTION has, in a great many cases, been very effective in the treatment of SUGAR DIABETES. It is a liquid extract of plant juices, containing other beneficial medicinal ingredients. Those who have taken DI-FUNCTION, even those people having very severe cases of DIABETES, have been able to entirely eliminate the use of other medicines and to resume their normal diet. * * *

"For eleven years I had sugar diabetes. My complexion was sallow and pasty looking. I was nervous and had headaches and pains all over my body.

"I took 35 units of insulin every day for 11 years, until I heard of DI-FUNCTION and started taking it. In a month I was greatly improved—headaches and pains all gone—complexion clear and rosy.

"Now I don't take any kind of medicine, and I feel that Di-Function has cured me of sugar diabetes.

"(Signed) M. M. S."

Fort Worth, Tex. * * *

Those suffering from sugar diabetes will be interested in the following letter from R. S. Ratliff of Bruceville, Texas * * * "In 1931 my Doctor told me I had sugar diabetes * * * put me on strict diet and prescription. * * * This condition continued until December 1938 when I heard about Di-Function, which I took regularly for two months * * * gradually feeling better * * * Recent blood test showed no sugar and now I don't feel any symptoms of Diabetes * * * Thanks to Di-Function."

PAR. 3. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's preparation, respondent represents, and has represented, directly and by implication, that its said preparation designated and advertised as "Di-Function" is an effective treatment which will cure sugar diabetes; that its use will revive the glands of the pancreas so that they will produce sufficient insulin for the body's needs; and that it will cure long-standing, severe cases of sugar diabetes and make possible the resumption of regular diet, the discontinuance of all medicines, and the enjoyment of a normally well and healthy life.

PAR. 4. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's said preparation is not an effective treatment for sugar diabetes, and it will not cure such disease or condition. Said preparation will not revive the glands of the pancreas or have any therapeutic effect thereon. Said preparation will not cure long-standing cases of sugar diabetes and will not make possible the resumption by a diabetic person of a regular diet, the discontinuance of all medicines, or the enjoyment of a normally well and healthy life.

Said preparation is of no therapeutic value in the treatment of any disease or condition of the human body.

PAR. 5. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in such advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's said advertisements are particularly false in that they fail to reveal that there is only one diabetic treatment which is accepted by the medical profession as competent for use in the treatment of sugar diabetes and that said treatment consists of a regulated diet, or a regulated diet and the supervised administration of insulin. If the accepted medical treatment is carefully followed, a diabetic person may live out his normal life expectancy. On the other hand, if a diabetic person is induced by false advertisements to abandon the accepted treatment or fail to take advantage thereof, his diabetic condition will become worse and as a result thereof his health and life will be endangered.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statement and representations are true and to induce a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's preparation.

PAR. 7. The aforesaid 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 8, 1942, issued, and thereafter served, its complaint in this proceeding charging the respondent, Di-Function Co., Inc., a corporation, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 1, 1942, the respondent filed its answer to said complaint, in which answer it admitted all of the material allegations of fact set forth in said complaint to be true and

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waived all intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and said 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, Di-Function Co., Inc., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2233 North Main Street, Fort Worth, Tex.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a preparation designated as "Di-Function" and advertised as a treatment for diabetes.

PAR. 2. The Commission finds that in the course and conduct of its said business the respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of, false advertisements concerning its said preparation, 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 the 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 preparation. The respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among, and typical of, the false statements and representations contained in the advertisements disseminated and caused to be disseminated as above found, are the following:

* * * Diabetes is caused, in the opinion of medical experts, by the failure of certain glands in the pancreas to do their normal work, which is the excre-

tion of natural insulin. Some people say that these glands are dead or destroyed, and that the only way a diabetic can keep alive is to continue to furnish the body with necessary insulin from the outside, by use of a needle. However, it is my opinion that these glands are not dead, but merely lying dormant. For some reason, they have ceased to function, and need some food and stimulation to cause them to become active again. I believe that my medicine is this necessary element to these glands to make them become active again. They grow, under the influence of DI-FUNCTION, until they are again in a strong enough condition to produce the insulin which is necessary to the human body. At that time, diabetes is gone, and the sufferer is cured. * * *

DI-FUNCTION has, in a great many cases, been very effective in the treatment of SUGAR DIABETES. It is a liquid extract of plant juices, containing other beneficial medicinal ingredients. Those who have taken DI-FUNCTION, even those people having very severe cases of DIABETES, have been able to entirely eliminate the use of other medicines and to resume their normal diet. * * *

"For eleven years I had sugar diabetes. My complexion was sallow and pasty looking. I was nervous and had headaches and pains all over my body.

"I took 35 units of insulin every day for 11 years, until I heard of DI-FUNCTION and started taking it. In a month I was greatly improved—headaches and pains all gone—complexion clear and rosy.

"Now I don't take any kind of medicine, and I feel that Di-Function has cured me of sugar diabetes. .

“(Signed) M. M. S.”

Fort Worth, Tex. * * *

Those suffering from sugar diabetes will be interested in the following letter from R. S. Ratliff of Bruceville, Texas * * * “In 1931 my Doctor told me I had sugar diabetes * * * put me on strict diet and prescription. * * * This condition continued until December 1933 when I heard about Di-Function, which I took regularly for two months * * * gradually feeling better * * *. Recent blood test showed no sugar and now I don't feel any symptoms of Diabetes * * * Thanks to Di-Function.”

PAR. 3. The Commission finds that through the use of the statements and representations above set out, all of which purport to be descriptive of the therapeutic properties of respondent's preparation, the respondent represents, and has represented, directly and by implication, that its said preparation designated and advertised as “Di-Function” is an effective treatment which will cure sugar diabetes; that its use will revive the glands of the pancreas so that they will produce sufficient insulin for the body's needs; and that it will cure long-standing, severe cases of sugar diabetes and make possible the resumption of regular diet, the discontinuance of all medicines, and the enjoyment of a normally well and healthy life.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondent as hereinabove found, are grossly exaggerated, false and misleading and said advertisements consti-

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tute false advertisements within the meaning of the Federal Trade Commission Act. In truth and in fact, respondent's said preparation is not an effective treatment for sugar diabetes, and it will not cure such disease or condition. Said preparation will not revive the glands of the pancreas or have any therapeutic effect thereon. Said preparation will not cure long-standing cases of sugar diabetes and will not make possible the resumption by a diabetic person of a regular diet, the discontinuance of all medicines, or the enjoyment of a normally well and healthy life.

Said preparation is of no therapeutic value in the treatment of any disease or condition of the human body.

PAR. 5. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in such advertisements, or under such conditions as are customary or usual, in that they fail to reveal that the only diabetic treatment recognized as competent for use in the treatment of sugar diabetes consists of a regulated diet, or a regulated diet and the supervised administration of insulin. If the recognized treatment indicated is carefully followed, a diabetic person may live out his normal life expectancy. On the other hand, if a diabetic person is induced by false advertisements, to abandon the recognized treatment or to fail to take advantage thereof, his diabetic condition will become worse and as a result thereof his health and life will be endangered.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's preparation.

CONCLUSION

The aforesaid 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 and the answer of the respondent, in which answer 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Di-Function Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparation designated "Di-Function," or any other preparation containing the same or similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement (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 advertisement represents, directly or by implication, that said preparation constitutes a cure or an effective treatment for sugar diabetes; that the use of said preparation will revive the glands of the pancreas or enable them to produce sufficient insulin for the body's needs; that the use of said preparation will make it possible for one having sugar diabetes to discontinue dieting and the use of medicines, or enable one to enjoy a normally well and healthy life; or that said preparation is of any therapeutic value in the treatment of any disease or 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 preparation, which advertisement contains 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
THE GENERAL TIRE & RUBBER COMPANY

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

Docket #608. Complaint, Oct. 7, 1941—Decision, Nov. 13, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of automobile tires; in advertising its "General Dual 8" and "General Dual 10" tires in newspapers, periodicals, and trade journals, and through radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media—

- (a) Represented directly and by implication that said tires were so constructed that an automobile equipped with either could be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that they would stop a car 50 percent quicker than all other makes or brands of tires, regardless of the kind of road or weather conditions, and without skid, swerve, or tail spin; that they were America's quickest stopping tires; afforded year-round protection against skidding; and would stop straight every time;

The facts being that they would not accomplish such results, and said representations were grossly exaggerated, false, and misleading; and

- (b) Represented that said tires were of "8-ply" and "10-ply" construction, through stamping or moulding on the side walls and imprinting on the labels and wrappers thereof in connection with the size and the word "General" the phrase "Dual 8" or "Dual 10," and through use of such terms in its advertising;

The facts being that tires in question were actually of 4-ply and 6-ply construction, and did not contain 8 or 10 plies, as understood by the public familiar with manufacturers' practice of moulding or stamping size and name on the side walls of tires, together with number of plies used in construction thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and with effect of placing in the hands of unscrupulous dealers means whereby they might more easily mislead the purchasing public with respect to the actual number of plies contained in said tires, and with result that a portion of said public was induced to purchase its said tires:

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.

Mr. John W. Carter, Jr., for the Commission.

Wise, Roetzel & Maxson, of Akron, Ohio, for respondent.