

Complaint

IN THE MATTER OF
POW-A-TAN MEDICINE COMPANY

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

Docket 4817. Complaint, Aug. 18, 1942—Decision, Apr. 22, 1943

Where a corporation, engaged in interstate sale and distribution of its "Pow-A-Tan Herb Tonic" for treatment of various ailments and diseases; in advertisements in newspapers and periodicals, radio broadcasts, circulars, leaflets and pamphlets, and other advertising literature, directly and by implication—

(a) Represented that said preparation was a cure or remedy and competent and effective treatment for all common human ailments, including neuritis, arthritis, rheumatism, indigestion, gas and bloating, bad taste, sick headache, tired-out feeling and general run-down condition, and female complaints;

The facts being said preparation was essentially a laxative; its therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste, and sick headache was limited to such temporary relief as might be afforded by a laxative when such conditions were caused by constipation, and similarly in case of latter condition itself; and it was without therapeutic value in the treatment of the other conditions set forth above;

(b) Falsely represented that use thereof would prevent such diseases and ailments as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases;

(c) Represented that \$1 was the regular price for its quart-size package, and that an offer to sell three for \$1 was special and limited; when in fact the latter was its regular and customary price;

(d) Represented falsely, through use of designation "tonic" in its brand name of its said product, that it was a general tonic; when it was not, as generally understood, and produced no such effect; and

(e) Failed to reveal facts material in the light of its aforesaid representations and with respect to the consequences which might result from use thereof under prescribed or usual conditions, in that, as a laxative, it was potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis, and in that frequent or continued use might result in dependence on laxatives;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing its purchase of such 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.

Mr. S. F. Rose 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

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Trade Commission, having reason to believe that Pow-A-Tan Medicine Co., a corporation, 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, Pow-A-Tan Medicine Co., is a corporation, organized and existing under and by virtue of the laws of the State of West Virginia with its principal office and place of business located at 825 Fourth Avenue, Huntington, W. Va.

PAR. 2. The respondent is now, and has been for several years last past, engaged in selling and distributing a certain medicinal preparation which it designates "Powatan Herb Tonic," recommended for use in the treatment of various human ailments and diseases. Respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of West Virginia to purchasers thereof located in 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 preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business aforesaid, has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said medicinal preparations by the United States mails and 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 said medicinal 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, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by radio broadcasts, circulars, leaflets, pamphlets, and other advertising literature, are the following:

If you are suffering from any common ailment regardless of how long you have suffered or what you have tried in the past * * * we want you to try our famous Powatan Herb Tonic while you can do so at our expense.

If you will mail \$1 check or money order to Pow-A-Tan, spelled P-O-W-A-T-A-N, in care of this station we will mail you three regular \$1 quart size packages of famous Powatan Herb Tonic * * *

If you are suffering like thousands of others this morning with neuritis, arthritis, rheumatism, indigestion, gas and bloating, if you don't sleep at night like other folks do, and can't eat the things you like to eat—If you need a good builder upper—Let me recommend famous Powatan Herb Tonic. Folks all over this part of the country are sending in testimonials telling of the wonderful results they have received since taking Famous Powatan Herb Tonic.

Relieves constipation, piles, biliousness, la grippe and colds in one day, or no cost.

Relieves weakness, tired out feeling and general run-down condition or no pay.

Relieves pain in the neck, shoulders, side, back or hips in one day, or money back.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once, or no pay.

Relieves lumbago and rheumatism; also female complaints or your cash refunded.

IT ACTS LIKE MAGIC

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Probably you are simply a little bilious from something that did not agree with you; liver a little lazy. Take Pow-A-Tan Herbs for a time and see if you don't lose all those unpleasant symptoms.

A person whose liver is acting perfectly will seldom have colds; if the bowels act perfectly, appendicitis is improbable; with perfectly acting bowels and liver, the germs of tuberculosis, cold, catarrh, typhoid, and other forms of contagious or acute diseases seldom obtain a foothold.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that said preparation is a cure or remedy for and constitutes a competent and effective treatment for all common human ailments; that it is a cure or remedy for and constitutes a competent and effective treatment for neuritis, arthritis, rheumatism, indigestion, gas and bloating, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, rheumatism, and female complaints; that the use of said preparation will effectively prevent such diseases and conditions as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases; that \$1 is the regular price for the quart size package of respondent's product and that an offer to sell three such packages for \$1 is a special and limited offer. Through the use of the designation "Powatan Herb Tonic" respondent represents its said product is a general tonic and produces a tonic action on the body.

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PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's medicinal preparation is not a cure or remedy for neuritis, arthritis, rheumatism, indigestion, gas and bloatiness, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, and female complaints. It will not prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases. Said preparation is essentially a laxative, and has no therapeutic value in the treatment of neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run down conditions, ailments and disorders of the liver, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, lumbago and female complaints, and has no therapeutic value in the treatment of gas and bloatiness, piles, biliousness, bad taste in the mouth and sick headache in excess of such temporary relief as may be afforded by a laxative when such symptoms or conditions are due to or caused by constipation, and has no therapeutic value in the treatment of constipation in excess of affording temporary relief. The regular and customary price of the quart size package of respondent's product is not \$1 and the offer to sell such packages for \$1 is not a special or limited offer but on the contrary is the regular and customary price in such quantity lots generally available to the public. Respondent's product is not a tonic as this term is generally understood and produces no general tonic effect on the body.

PAR. 6. 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing

public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparation.

PAR. 8. 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 August 18, 1942, issued and thereafter served its complaint in this proceeding upon the respondent, Pow-A-Tan Medicine Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, 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, Pow-A-Tan Medicine Co., is a corporation, organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 825 Fourth Avenue, Huntington, W. Va.

PAR. 2. The respondent, is now, and has been for several years last past, engaged in selling and distributing a certain medicinal preparation which it designates "Powatan Herb Tonic," recommended for use in the treatment of various human ailments and diseases. Respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of West Virginia to purchasers thereof located in 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 preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business aforesaid, has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said medicinal preparations by the United States mails and 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 said medicinal 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, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by radio broadcasts, circulars, leaflets, pamphlets, and other advertising literature, are the following:

If you are suffering from any common ailment regardless of how long you have suffered or what you have tried in the past * * * we want you to try out famous Powatan Herb Tonic while you can do so at our expense.

If you will mail \$1 check or money order to Pow-A-Tan, spelled P-O-W-A-T-A-N, in care of this station we will mail you three regular \$1 quart size packages of famous Powatan Herb Tonic * * *

If you are suffering like thousands of others this morning with neuritis, arthritis, rheumatism, indigestion, gas and bloating, if you don't sleep at night like other folks do, and can't eat the things you like to eat—If you need a good builder upper—Let me recommend famous Powatan Herb Tonic. Folks all over this part of the country are sending in testimonials telling of the wonderful results they have received since taking Famous Powatan Herb Tonic.

Relieves constipation, piles, biliousness, in grippe and colds in one day, or no cost.

Relieves weakness, tired out feeling and general run-down condition or no pay.

Relieves pain in the neck, shoulders, side, back or hips in one day, or money back.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once, or no pay.

Relieves lumbago and rheumatism; also female complaints or your cash refunded.

IT ACTS LIKE MAGIC

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Probably you are simply a little bilious from something that did not agree with you; liver a little lazy. Take POW-A-TAN HERBS for a time and see if you don't lose all those unpleasant symptoms.

A person whose liver is acting perfectly will seldom have colds; if the bowels act perfectly, appendicitis is improbable; with perfectly acting bowels and liver, the germs of tuberculosis, cold catarrh, typhoid, and other forms of contagious or acute diseases seldom obtain a foothold.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that said preparation is a cure or remedy for and constitutes a competent and effective treatment for all common human ailments; that it is a cure or remedy for and constitutes a competent and effective treatment for neuritis, arthritis, rheumatism, indigestion, gas and bloating, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, and female complaints; that the use of said preparation will effectively prevent such diseases and conditions as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases; that \$1 is the regular price for the quart size package of respondent's product and that an offer to sell three such packages for \$1 is a special and limited offer. Through the use of the designation "Powatan Herb Tonic" respondent represents its said product is a general tonic and produces a tonic action on the body.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's medicinal preparation is not a cure or remedy for neuritis, arthritis, rheumatism, indigestion, gas and bloating, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago and female complaints. It will not prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid and other contagious and acute diseases. Said preparation is essentially a laxative, and has no therapeutic value in the treatment of neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run down conditions, ailments and disorders of the liver, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, lumbago, and female complaints, and has no therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste in the mouth and sick

headache in excess of such temporary relief as may be afforded by a laxative when such symptoms or conditions are due to or caused by constipation, and has no therapeutic value in the treatment of constipation in excess of affording temporary relief. The regular and customary price of the quart size package of respondent's product is not \$1 and the offer to sell three such packages for \$1 is not a special or limited offer but on the contrary is the regular and customary price in such quantity lots generally available to the public. Respondent's product is not a tonic as this term is generally understood and produces no general tonic effect on the body.

PAR. 6. 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said 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, Pow-A-Tan Medicine Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Pow-A-Tan Herb Tonic," or any other medicinal preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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 preparation is a cure or remedy for neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run-down condition, ailments or disorders of the liver, pains in the neck, shoulders, side, back, and hips, heartburn or palpitation of the heart, belching, gas on stomach, sick stomach, lumbago, or female complaints or that said preparation has any therapeutic value in the treatment of any of such conditions.

(b) That respondent's preparation has any therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste in the mouth, or sick headache in excess of affording temporary relief when such conditions are due to constipation.

(c) That respondent's preparation is a cure or remedy for constipation or that it has any therapeutic value in the treatment thereof in excess of affording temporary relief for such condition.

(d) That the use of respondent's preparation will prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid, or other contagious or acute diseases.

(e) That respondent's preparation is a tonic or that its use will produce a general tonic effect on the body.

2. 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 fails to reveal that respondent's preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *Provided, however*, That if the directions for use wherever they appear, on the label, in the labeling, or both

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on the label and in labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement, "CAUTION: Use only as directed."

3. 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 respondent's preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to comply with the requirements set forth in paragraph 2 hereof.

4. Representing directly or by implication that said preparation is sold by means of a special or limited offer when the method of distribution is the usual and customary method used by the respondents in the usual and customary course of business.

5. Using the word "tonic" alone or in association with any other word or words to designate, describe, or refer to any preparation which is not a tonic and which does not produce any general tonic effect upon the body.

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.

Syllabus

IN THE MATTER OF

PHILIP R. PARK, INC., PHILIP R. PARK, HARRISON H.
HAVNER, JOHN S. HUNT, AND PHILIP E. IVERSENCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4504. Complaint, May 15, 1941—Decision, Apr. 27, 1943*

Where a corporation and four individuals, who as director and officers controlled its advertising policies and business activities, engaged in the mixing and competitive interstate sale and distribution, among other livestock and poultry feeds, of their "Cattle ManAmar" or "ManAmar," composed of ground dehydrated kelp and fish meal chiefly; in advertisements in magazines and other periodicals, and in pamphlets, folders, and other advertising literature, directly or by implication—

(a) Represented that said product had therapeutic value in the treatment of various diseases and disorders of cattle, would eliminate, cure, or prevent mastitis and breeding disorders, including Bang's disease, and prevent retained placenta; and that use thereof would eliminate the necessity of veterinary services;

The facts being that it had no medicinal quality or therapeutic value in the treatment of any germ or infectious disease—such as usually cause breeding troubles in cattle—or of any breeding disorder or mastitis, and had no value in preventing the same, including infectious abortion or Bang's disease, or retained placenta; and use thereof would not serve as a substitute for veterinary care or eliminate necessity of veterinary treatment, but on the contrary, reliance thereon in case of contagious diseases might cause their spread through failure to segregate or dispose of infected animals;

(b) Represented that its said product was a better feed supplement and constituted a better livestock feed than any other on the market;

The facts being that its value as a feed supplement was no greater than that of many others; while it would supply iodine when used in sections of the country where iodine deficiency exists, the amount thereof was insufficient to act as a germicide and was of no value whatsoever where any germ or infectious disease existed; and other minerals which might be supplied by it are readily obtainable in many other feeds, and likewise have no such therapeutic value;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it to purchase the product in question, whereby trade was diverted unfairly from competitors who truthfully represent their products:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. John M. Russell and *Mr. Randolph W. Branch* for the Commission.

Mr. Daniel Dougherty, of San Francisco, Calif., for respondents.