

IN THE MATTER OF

WILLIAM G. NASH, SR., ET AL., TRADING AS
NASH BROTHERS DRUG COMPANY

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

Docket 3775. Complaint, Apr. 27, 1939—Decision, May 6, 1943

Where three brothers, engaged in the compounding and interstate sale and distribution of their "Nash's C. & L. Malaria Chill Tonic and Laxative"; through representations in newspapers and periodicals, form letters, circulars, folders, testimonials, and radio continuities, directly and by implication—

- (a) Represented that their said medicinal preparation was an effective treatment for malaria, and a guaranteed, unsurpassed and effective preventive and cure for all types thereof; and that it was a remedy and effective treatment for biliousness, constipation, liver troubles, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and disorders;
- (b) Represented that use thereof would clean out the system and restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that it was an effective tonic which would restore vigor and vitality; that use thereof both prevented and cured colds; and that it was a new discovery which was in no way habit-forming or harmful to users, young or old;

The facts being that, while said product was an anti-malaria preparation and laxative, it was not a competent or effective treatment for the cure of malaria in that, taken in accordance with the directions on its label, it would not provide the minimum alkaloid content necessary; though daily use thereof in the proper dosage over a long period of time would be a competent and effective treatment for such purpose, prolonged administration thereof, due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, would be likely to be harmful and habit-forming; and, while a competent treatment for the temporary relief of biliousness and constipation, it was, as aforesaid, habit-forming, and might be harmful if taken by those suffering from abdominal pains, nausea, or other symptoms of appendicitis; and claims that it constituted a cure or effective treatment for the other conditions or diseases specified constituted false advertisements; and

- (c) Falsely represented that said preparation was endorsed by nurses, physicians, school teachers, and health officials throughout the southern part of the United States; and that 9 persons out of 10 residing in said part of the United States had malaria; and
- (d) Represented that if an individual, among other things, trembled all over, lacked energy, ached or was bilious, constipated, nervous, depressed, sleepless, broken out, etc., or had upset stomach, dizzy spells, chills, occasional fever, hot and cold flashes, liver disorders, improper functioning of the kidneys, etc., or if a child was unruly, irritable, listless, or sluggish, then such person or child was exhibiting symptoms of malaria, and its said preparation was a competent and effective treatment therefor;

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The facts being that while ague, chills, third-day chills, fever, swamp chills, or hot and cold flashes may and often do accompany an attack of malaria and are recognized as symptoms thereof, and while, if said symptoms are caused by malaria, its preparation would be a competent and effective treatment if used in the proper therapeutic doses over a sufficient period of time, it would not, as noted above, be such if taken according to the directions on the label; and existence of the other disorders or conditions set forth above, does not indicate malaria;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true; and with tendency and capacity to induce it, because of such mistaken belief, to purchase 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.

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

Mr. Clinton Robb, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., 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. Respondents William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co., and their principal office and place of business is in Jonesboro, Ark.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of Arkansas, and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in

said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions 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 program emanating therefrom to listeners located in various States of the United States other than the State in which such 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 their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product 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:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly blotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

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Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach? Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of Pep, viz, vim, and vigor.

3. Satisfaction Guaranteed and again, Remember This is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain.

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "Nash's."

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The All Year Round Tonic, Remedy, Purgative, Preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. It is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing Going—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health Officials and Others Endorse Nash's Tonic.

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10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

PAR. 4. Through the use of the statements and representations hereinafore set forth and others similar in meaning thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventative and remedy or cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit-forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and that 9 out of 10 of the people residing in the southern part of the United States have malaria.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements.

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are symptoms of malaria. Said preparation is not a proper, effective, or unsurpassed remedy or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the

bowels, nor will it add red corpuscles to the blood, aid digestion, or increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery, and it is not a safe and harmless medicine for use in all cases by infants, children, adults, and elderly people, as represented and advertised by the respondents. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect in the treatment of certain forms of malaria at certain stages of development, said preparation is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

Furthermore, said statements and representations are misleading and constitute false advertisements in that they fail to reveal the fact that the drugs "quinidine" or "quinidine alkaloids" and "cinchonine alkaloids," as used in said preparation, have a powerful effect upon the heart and upon other organs or parts of the body which may cause injury to the health of the user if taken in accord with the statements and recommendations contained in said advertisements, or under such conditions as are customary or usual.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, 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 false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute

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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 and by virtue of the authority vested in it by said act, the Federal Trade Commission on the 27th day of April 1939, issued, and on the 29th day of April 1939, served its complaint on William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually, and as copartners, trading as Nash Brothers Drug Co., charging these respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. No answer was filed by the respondents.

On July 26, 1939, a stipulation as to the facts was entered into and approved by the Commission, upon which the Commission based its findings as to the facts and, on the 1st day of August 1939, issued its cease-and-desist order. Thereafter, to wit, on the 30th day of July 1942, a petition was filed by Assistant Chief Counsel Whiteley praying (for reasons therein assigned) that the stipulation as to the facts, findings as to the facts, and the order to cease and desist be vacated and set aside, and the case reopened for the purpose of receiving such competent testimony and other evidence in support of or in opposition to the complaint as might be offered.

On the 3d day of August 1942 the Commission issued, and on the 5th day of August 1942, served on the respondents its order (together with a copy of the aforesaid petition) fixing the time and the place when and where a hearing would be held on said petition. Thereafter, to wit, on the 31st day of August 1942, the Commission issued and on the 3d day of September 1942, served on these respondents its order vacating and setting aside the aforesaid stipulation of facts, findings as to the facts, and order to cease and desist, and ordering that this case be reopened for the purpose of receiving such competent testimony and other evidence in support of or in opposition to the complaint as might be offered.

On the 24th day of September 1942, the attorney for these respondents filed an answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that the statement of facts (and exhibits thereto attached) signed and executed by the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint, and the said Commission might proceed upon said statement of facts

and the exhibits thereto attached to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or filing of briefs, and without the filing of the trial examiner's report upon the evidence.

This proceeding thereafter regularly came on for final hearing before the Commission on said complaint, answer, stipulation, and exhibits (said stipulation having been approved, accepted, and filed); 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. Respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, are individuals and copartners, trading as Nash Brothers Drug Co., with their principal office and place of business located in Jonesboro, Ark., and they are now, and for more than 1 year last past have been, engaged in the compounding of a medical preparation formerly designated "Nash's C. & L. Tonic," now designated "Nash's C. & L. Malaria Chill Tonic and Laxative," 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.

PAR. 2. These respondents cause their said medicinal preparation, designated as aforesaid, when sold, to be transported from their place of business in the State of Arkansas to the purchasers thereof located in various other States of the United States and in the District of Columbia and they maintain, and at all times mentioned herein, have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and in the furtherance of the sale and distribution of the said medicinal preparation, designated as aforesaid, these respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of, advertisements concerning their aforesaid medicinal preparation by the United States mails, and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated, and are now disseminating and have caused and are now causing the dissemination of, advertisements concerning their said medicinal preparation, designated as aforesaid, by various means, for the purpose of inducing and

which are likely to induce, directly or indirectly, the purchase of said medicinal preparation, in commerce, as commerce is defined in the Federal Trade Commission Act.

All advertising material used by respondents is disseminated, as aforesaid, through the following media:

- (a) Newspapers and periodicals;
- (b) Form letters;
- (c) Circulars, folders, and testimonials, and
- (d) Radio continuities.

Among and typical of the statements and representations disseminated and caused to be disseminated by the United States mails, in newspapers and periodicals, radio continuities, circulars, form letters, testimonials, and other advertising media prior to May 1939, are the following:

(1) CHECK these SYMPTOMS YOURSELF—on yourself—and on your family! See How Many of These SYMPTOMS You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night? Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly splotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach? Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

(2) NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of PEP, viz, vim and vigor.

(3) SATISFACTION GUARANTEED and again, REMEMBER THIS IS A GUARANTEED REMEDY. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain!

(4) FOR MALARIA, BILIOUSNESS, CONSTIPATION NASH'S TONIC is a guaranteed remedy, unsurpassed for chills and malaria and its kindred or resulting ailments—billousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "NASH'S".

(5) Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

(6) Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take NASH'S TONIC regularly.

(7) THE ALL YEAR ROUND TONIC, REMEDY, PURGATIVE, PREVENTIVE!

NASH'S TONIC is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and billousness, chills, fever, ague, third-day chills, swamp chills, constipation, stomach troubles, etc. Is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

(8) FOR BABY—FOR GRANDMA And All Ages in Between

NASH'S TONIC is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing GOING—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

(9) SCHOOL TEACHERS—Health Officials and Others Endorse NASH'S TONIC.

(10) This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

(11) Yes, indeed—you can take NASH'S TONIC with every confidence in the world, and your Physician will pass on the above ingredients. NASH'S TONIC is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

(12) * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

Through the use of the statements and representations hereinabove set forth, and the statements and representations contained in respondents' exhibits 1 to 30, inclusive, disseminated as aforesaid, and in other statements and representations of similar import but not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' medicinal preparation, "Nash's C. & L. Malaria Chill Tonic and Laxative," respondents represent, directly and by implication, among other things, that the said medicinal preparation is a cure and remedy and constitutes an effective treatment for malaria, biliousness, constipation, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that said preparation is a proper, guaranteed, unsurpassed, and effective preventive and remedy and cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion; and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, school teachers, and health officials throughout the southern part of the United States; and that 9 out of 10 persons residing in the southern part of the United States have malaria.

PAR. 4. Respondents further represent, directly and by implication, in the manner and by the means aforesaid, that if an individual trembles all over, lacks energy, pep, or ambition, aches in every bone of the body; or

If an individual is bilious, constipated, nervous, irritable, blue, depressed, worn out, losing weight, unduly superstitious, always tired, completely run down, restless at night and cannot sleep, broken out with pimples, boils, or unsightly splotches; or

If an individual has sour stomach, gas on the stomach, upset stomach, backache, dizzy spells, bad breath, indigestion, nightmares, chills, occasional fever, bad dreams, coated tongue, hot and cold flashes, foolish fears and dreads, bad taste in the mouth, occasional or habitual dull or sick headaches, sallow, yellow complexion, floating specks before the eyes, chronic colds, shaking hands and knees, liver disorders, improper or abnormal functioning of the kidneys; or

If a child is unruly, irritable, restless, or sluggish, then such person, individual or child, as the case may be, is exhibiting symptoms, manifestations or conditions indicating that such person, individual, or child is suffering from malaria and that the medicinal preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is a competent and effective treatment for such symptoms and conditions.

PAR. 5. The foregoing representations and advertisements, and others of similar import not specifically set out herein, are grossly exaggerated and misleading, and constitute false advertisements.

Respondents' medicinal preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is compounded in 100-gallon lots.

The quantitative formula is:

Quinidine Alkaloid.....	130 ozs.
Cinchonine Alkaloid.....	65 ozs.
Phenolphthalein, White.....	55 ozs.
F. E. Mandrake.....	145 ozs.
Simple Syrup, Q. S.....	100 gals.

The directions for use appearing on the label are:

As a laxative and Quinidine and Cinchonine tonic children, 6 to 8 years old, 1 teaspoonful; 8 to 12 years old, 2 teaspoonfuls; 12 to 16 years old, 3 teaspoonfuls; Adults, a tablespoonful. Take a dose every four hours until bowels act freely, then three times a day for five to seven days. For treating common Malaria, see directions on circular.

The directions for use appearing in the circular packaged with this preparation are:

If constipated at the time it will be found beneficial to take dose (one tablespoonful for adults, children in proportion) every two hours until bowels act freely, then as a tonic at least four times a day for five to seven days.

As thus compounded and when taken as directed for the treatment of malaria (a tablespoonful four times a day) "Nash's C. & L. Malaria Chill Tonic and Laxative" will provide the user with approximately 8.9 grains of the quinidine alkaloids and 4.4 grains of the cinchonine alkaloids.

It is the consensus of competent medical and scientific opinion that the crystallizable cinchona alkaloids (quinine, quinidine, cinchonine, and cinchonidine), separately or in combination, are effective drugs for use in the prevention and cure of malaria, that the optimum dose for adults of any one alkaloid or any combination of the alkaloids is 30 grains a day, but that a minimum dose of 20 grains a day, of any one alkaloid or any combination of the alkaloids, for adults, is recognized as an effective therapeutic dose in the treatment of malaria;

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that the minimum daily dose for children of any one alkaloid or any combination of the alkaloids in the treatment of malaria is:

	<i>Grains</i>
Under 1 year.....	2½
1 to 2 years.....	5
3 to 4 years.....	7½
5 to 6 years.....	10
7 to 8 years.....	12½
9 to 10 years.....	15
11 to 12 years.....	17½
13 years and over.....	20

It is also the consensus of competent medical and scientific opinion that in order for a preparation containing one or more of the cinchona alkaloids to be considered a competent and effective treatment for malaria, such preparation, when taken as directed, should provide an adult daily, over a period of time of not less than 7 consecutive days, with at least 20 grains of its alkaloid contents.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" as now constituted is an anti-malarial preparation and laxative, but when taken in accordance with the directions for use appearing on its label and in its labeling will not provide an adult daily with at least 20 grains of the alkaloid content, nor will it provide a child daily with the minimum amount of alkaloid content called for in the table for children just hereinabove set forth. Therefore, this preparation is not a competent or effective treatment for the cure of malaria.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is not a cure and remedy nor does it constitute an effective or competent treatment for liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, or various other conditions or diseases of the human body. It is not an unsurpassed remedy for or preventive of malaria. It will not clean out the system. It will not restore the normal functioning of the bowels. It will not add red corpuscles to the blood. It will not restore vigor or vitality. It will not prevent or cure colds. It is not a new discovery. It is not a safe medicine for the baby or infant. It is not endorsed by nurses, physicians, school teachers, or health officials throughout the southern part of the United States. Nine out of ten persons residing in the southern part of the United States do not have malaria.

PAR. 6. The disorders, conditions, and symptoms such as biliousness, constipation, nervousness, liver disorders, chronic colds, sour stomach, gas on the stomach, upset stomach, backache, dizziness, bad breath, indigestion, coated tongue, loss of weight, trembling all over, lack of energy, pep, or ambition; aching in every bone of the body; or

The condition of feeling blue, depressed, worn out, completely run down, tired, or restless; or

The condition of being irritable or unduly superstitious; or

The condition of having bad dreams, nightmares, foolish fears and dreads, pimples, boils, or unsightly blotches, a bad taste in the mouth, a sallow, yellow complexion, floating specks before the eyes, shaking hands and knees, an improper or abnormal functioning of the kidneys, occasional or habitual dull or sick headaches; or

The fact that a child is unruly, irritable, restless, or sluggish, are not symptoms or manifestations of malaria. The existence of one or more of such symptoms, disorders, or conditions, as hereinabove listed, does not indicate that the person, individual, or child, as the case may be, is suffering from malaria.

Ague, chills, third-day chills, fever, swamp chills, or hot and cold flashes may, and often do, accompany an attack of malaria, and they are recognized as symptoms of malaria. When such symptoms, conditions, or disorders are caused by malaria, respondents' medicinal preparation "Nash's C. L. Malaria Chill Tonic and Laxative" would be a competent and effective treatment therefor if used in the proper therapeutic doses over a sufficient period of time, but if taken according to the directions for use now appearing on the label and in the labeling, respondents' preparation is not a competent or effective treatment for such symptoms, disorders, or conditions.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is a competent treatment for the temporary relief of biliousness and constipation: *Provided, however*, A proper recommendation of dosage for the treatment of such conditions is specifically given in the directions for use. But due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, the preparation is habit-forming if taken over a long period of time and may be harmful if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use of the drugs, quinidine, cinchonine, and cinchonidine, separately or in various combinations of one with the other, in proper daily therapeutic doses over a long period of time is one of several ways of preventing the development of malaria. The use of respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" in the proper daily therapeutic dosage over a long period of time would be a competent and effective treatment for the prevention of malaria, but due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, a prolonged administration of this preparation is likely to be harmful and habit-forming, as hereinabove set forth.

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This preparation, therefore, should not be advertised or sold for the prevention of malaria.

PAR. 8. The use by the respondents of the foregoing statements, representations and advertisements, and others of similar import, disseminated as aforesaid, has had and now 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, representations and advertisements are true and that the preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" will accomplish all of the results claimed for it by the respondents, and that it is harmless and safe to use; and the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the aforesaid medicinal preparation.

CONCLUSION

The 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, the answer of the respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides among other things that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents findings as to the facts and its conclusion based thereon, and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually, and trading as Nash Bros. Drug Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' medicinal preparation designated "Nash's C & L Malaria Chill Tonic and Laxative," or any other preparation or combination of preparations of substantially similar composition or possessing substantially similar properties, by whatever name

or names designated, 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 by implication—

A. That respondents' preparation—

(1) is a cure or remedy or constitutes an effective or competent treatment for ague, chills, third-day chills, fever, swamp chills, hot or cold flashes, or malaria, unless the prescribed dosage for adults and for children provides daily for 7 consecutive days the minimum amount of the alkaloid or alkaloids recommended, approved and recognized by scientific and medical authority as essential and necessary to constitute a competent or effective dosage;

(2) is a cure or remedy or constitutes an effective or competent treatment for liver trouble, dyspepsia, backache, nervousness, or stomach trouble;

(3) is a cure or remedy for headache, or has any therapeutic value in the treatment of such condition in excess of affording temporary relief by an evacuation of the bowels in those cases where such condition is due to constipation;

(4) is a cure or remedy for biliousness or constipation, or has any therapeutic value in the treatment of such conditions other than to afford temporary relief by an evacuation of the bowels;

(5) is an unsurpassed remedy for malaria or a new discovery, or is endorsed by nurses, physicians, school teachers, or health officials;

(6) is a safe medicine for infants or babies;

(7) will clean out the system, restore the normal functioning of the bowels, restore vigor or vitality, add red corpuscles to the blood, or will prevent or cure colds; or

(8) will prevent malaria.

B. That 9 out of 10 persons residing in the southern part of the United States have malaria.

C. That the existence of the disorders or conditions such as biliousness, constipation, nervousness, liver disorders, chronic colds, sour stomach, gas on the stomach, upset stomach, backache, dizziness, bad breath, indigestion, coated tongue, loss of weight, trembling all over, lack of energy, pep, or ambition, aching in every bone of the body; or the condition of feeling blue, depressed, worn out, completely run down, tired, or restless; or the condition of being irritable or unduly superstitious; or the condition of having bad dreams, nightmares, foolish fears and dreads, pimples, boils, or unsightly blotches, a bad taste in the mouth, a sallow yellow complexion, floating specks before

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the eyes, shaking hands and knees, an improper or abnormal functioning of the kidneys, occasional or habitual dull or sick headaches; or the fact that a child is unruly, irritable, restless or sluggish, is symptomatic of or indicates that the individual or child is suffering from malaria.

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 fails to reveal that said preparation should not be used by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis; provided, however, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

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 said preparation, which advertisement contains any representation prohibited in paragraphs 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

PHIL HOWE, DAVID A. HOWE, AND JOANNE B. HOWE,
TRADING AS HOWE AND COMPANY

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

Docket 4729. Complaint, Mar. 16, 1942—Decision, May 6, 1943

Where an individual, later associated with two members of his family, engaged in the interstate sale and distribution of cosmetic preparations purchased in bulk and packaged and sold under his name; by means of circulars, leaflets, counter-display cards and other advertising material, as well as labels attached to containers of said products—

- (a) Falsely represented, through use of such descriptive designations as "Cleansing Cream, Carrot Type," "Creme Nocturne, Avocado Type," and "Hand Lotion, Honey and Almond Type," that products in question contained, respectively, the juice, extract, or other content of carrots, avocados, and honey and almonds; and through designation "Finishing Cream, Turtle Oil Type" that product in question contained turtle oil;
- (b) Falsely represented that his "Cleansing Cream, Carrot Type" induced natural lubrication of the skin, that his "Creme Nocturne, Tissue Type," enriched the skin tissues, and corrected skin dryness, and that his "Creme Nocturne, Avocado Type" nourished the skin with vitamins, stimulated dormant muscles, and replenished tissues;
- (c) Represented, through inclusion of word "Hollywood" in brand names featured in advertising and on labels on various items, that one of his leading lines was made in Hollywood, Calif.—cosmetics of which, associated by a substantial portion of the purchasing public with the motion-picture industry, are preferred by it over those made elsewhere—and through inclusion on labels of legend "Favorite of the Stars," that preparations in question were recognized by leading motion-picture actresses as possessing superior cosmetic properties;

The facts being that only 3 of the 20 items sold by him under name "Hollywood" and representing a little over half of his total purchases were obtained from sources in Hollywood; said misrepresentation or implication was not corrected by the words "Seattle, Distributors," in small and inconspicuous type also appearing on labels, from which prospective purchaser could reasonably conclude that products were made in Hollywood and distributed by a Seattle concern; and preparations in question were not recognized by leading motion-picture actresses as possessing superior cosmetic properties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and origin of said products, thereby causing substantial purchase thereof, as a result of such mistaken belief;

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.