

Complaint

IN THE MATTER OF
KOLA ASTIER CORPORATION AND GALLIA
LABORATORIES, INC.

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

Docket 4682. Complaint, Jan. 26, 1942—Decision, June 24, 1948

Where two corporations under common ownership and with identical addresses and officers, engaged in interstate sale and distribution of their "Kola Astier" medicinal preparation; by means of advertisements disseminated through the mails and otherwise, directly and by implication—

Represented that their said product had therapeutic value in the treatment of disorders and conditions which resulted from exhausted nerves, and constituted an effective treatment for poor digestion and insomnia; was a tonic which would strengthen, sustain, and promote abundant nerve force; acted directly on the nerve centers, and sped up the functions of every organ; strengthened heart action, increased blood circulation, activated liver and kidneys, and improved digestion; and that use thereof would restore nerve force and lost strength;

The facts being that in the recommended dosage of said product, the amount of caffeine—the only active ingredient—was approximately the same as that contained in a weak cup of coffee; the value of the preparation was limited to that of a temporary stimulant, and only to the extent of the stimulating effect obtained from a cup of coffee; it had no therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves, other than that afforded by a mild, temporary stimulant; any beneficial effect upon poor digestion was negligible, and it might have a tendency to increase insomnia; the amount of caffeine in the recommended dosage would have a negligible effect upon heart action or circulation; and the diuretic action of both the caffeine and theobromine was negligible and would have no effect in activating the liver and kidneys;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said preparation was of therapeutic value, thereby causing purchase thereof because of such mistaken belief:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Walter L. Post, of New York City, 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 Kola Astier Corpora-

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tion, a corporation, and Gallia Laboratories, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Kola Astier Corporation and Gallia Laboratories, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of New York, each with its principal place of business located at 254-256 West Thirty-first Street, New York, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the offering for sale, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of a medicinal preparation designated as Kola Astier.

Respondents cause said preparation, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents 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 the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation by the United States mails and by various 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 said preparation; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 false advertisements, disseminated and caused to be disseminated by respondents, as aforesaid, are the following:

Exhausted Nerves Cause of Many Ills

Do sudden noises make you jump * * * the radio set you on edge? Are you irritable, impatient * * * snappy with your family? Do you easily get the "blues"? Digestion poor? Spend restless nights?

Exhausted nerves probably explains it all. For remember, it is our nerves that govern and control everything that goes on within us—every activity of brain and body. When sufficient nerve-force is lacking, the entire human machinery slows down—none of our organs function properly. Restore nerve-force and improvement immediately takes place.

KOLA ASTIER will help you. This wonderful preparation developed by Dr. P. Astier of Paris is what leading European doctors themselves take when they get tired out and nervous and want quick new strength. It is a sustaining tonic that never lets you down—that leaves no depressing after-effect. It tones, strengthens, sustains, promotes abundant nerve-force. So highly does the medical profession look upon *Kola Astier* that since 1928 alone over 10,000,000 bottles have been used, mostly as a result of doctors' prescriptions.

Start taking Kola Astier today and see how quickly calm nerves, poise, cheerfulness, mental keenness, and physical vigor, pep and endurance return.

VIGOR, VITALITY, STAMINA, THROUGH NEW NERVE FORCE

Your nerves control every function of your body and brain. When your nerves have weakened, your stomach, liver, kidneys, bowels, cease functioning properly, robbing you of body strength and mental vigor. You lack "pep," your mind becomes sluggish, you are easily depressed.

Kola Astier, wonderful, stimulant-tonic developed by Dr. P. Astier of Paris, contains ingredients that act directly on the nerve centers and promote new nerve force which speeds up the functions of every organ. Your heart action is strengthened, blood circulation increased, liver and kidneys activated, digestion improved. Mental sluggishness disappears. Vim, vigor, cheerfulness, soon return.

"Kola Astier restores lost strength," writes one doctor. Another doctor writes, "I have obtained most satisfactory results with Kola Astier in cases of physical and mental over-strain, nervous exhaustion and general rundown conditions."

Get rid of that tired-out feeling. Gain vigor, pep. You can quickly regain lost vigor and pep with KOLA ASTIER * * * The powerful yet harmless vitalizer.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents have represented and do now represent, directly and by implication, that their medicinal preparation designated as Kola Astier is a competent and effective remedy for insomnia, restlessness, and exhausted or weakened nerves; that it is an effective tonic which leaves no depressing after-effects; that it tones, strengthens, sustains, and promotes new or abundant nerve force; that it restores calm nerves, poise, cheerfulness, mental keenness, physical vigor, pep, and endurance; that it acts directly on the nerve centers, strengthens heart action, increases blood circulation, activates

liver and kidneys, improves digestion; that it restores lost strength, relieves physical and mental overstrain, nervous exhaustion, and general run-down condition.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false, and misleading. In truth and in fact said preparation is not a competent and effective remedy for insomnia, restlessness, and exhausted or weakened nerves. It is not an effective tonic which leaves no depressing after-effects. It does not tone, strengthen, sustain, and promote new or abundant nerve force. It does not restore calm nerves, poise, cheerfulness, mental keenness, physical vigor, pep, and endurance. It does not act directly on the nerve centers, does not strengthen heart action, does not increase blood circulation, does not activate liver and kidneys, and does not improve digestion. It does not restore lost strength, relieve physical and mental overstrain, nervous exhaustion, or overcome a general run-down condition. Furthermore, said preparation is of no therapeutic value in the treatment of any disease or condition of the body in excess of its effect as a temporary stimulant and a mild diuretic.

PAR. 6. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated, statements and representations with respect to respondents' said preparation 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 said statements and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices 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 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Kola Astier Corporation, a corporation, and Gallia Laboratories, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by

it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); 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, Kola Astier Corporation and Gallia Laboratories, Inc., are corporations, organized, existing, and doing business under and by virtue of the laws of the State of New York, each with its principal place of business located at 254-256 West Thirty-first Street, New York, N. Y.

PAR. 2. During the times hereinafter mentioned and in the manner hereinafter described the respondents have been engaged in the offering for sale, sale, and distribution of a medicinal preparation designated as "Kola Astier" in commerce among and between the various States of the United States. Respondents have caused said preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 3. Respondent, Gallia Laboratories, Inc., was organized in 1926. From the date of its organization until about 1936 said respondent was engaged in the sale and distribution of the medicinal preparation Kola Astier to the medical profession. In 1936, the respondent, Kola Astier Corporation, was formed to use the name "Kola Astier" in advertising to the general public. From the date of its organization until about the year 1941, the respondent, Kola Astier Corporation, was engaged in the manufacture of the medicinal preparation Kola Astier, the entire output of which was sold to the respondent, Gallia Laboratories, Inc., for distribution to the purchasers thereof. In 1941 the respondent, Kola Astier Corporation, discontinued business but was never dissolved as a corporation and still continues in existence. Since the discontinuance of active business by the Kola Astier Corporation, the respondent, Gallia Laboratories, Inc., has been engaged

in the manufacture, as well as the sale and distribution, of said medicinal preparation. Since 1936 said preparation has been sold to wholesale druggists, chain stores, and a few professional men.

The respondents, Kola Astier Corporation and Gallia Laboratories, Inc., are both wholly owned by Dr. P. Astier, with the exception of two qualifying shares. The place of business of each of said respondents was located at the same address and the officers of said respondent corporations were identical. In 1939 Dr. P. Astier was president; Albert Thouin, vice president; Edward Lassere, second vice president; and Henry Dalby, secretary-treasurer, of both of said corporations. In February 1942, for the purpose of qualifying to obtain an alcohol permit, Edward Lassere, became president and treasurer of Gallia Laboratories, Inc. This was necessary because the ownership of the stock of said respondent corporation was held by Dr. P. Astier, who resided in Paris, France. There was, however, no change in the ownership of the capital stock of either of said respondent corporations.

The Commission finds that the respondent corporations, acting by and through identical officers, acted in conjunction and cooperation with each other in performing the acts and practices hereinafter described.

PAR. 4. In the course and conduct of their aforesaid business the respondents have disseminated and have caused the dissemination of false advertisements concerning their said preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 false advertisements disseminated and caused to be disseminated by respondents as aforesaid, are the following:

Kola Astier, wonderful stimulant-tonic developed by Dr. P. Astier of Paris, contains ingredients that act directly on the nerve centers and promote new nerve force which speeds up the functions of every organ. Your heart action is strengthened, blood circulation increased, liver and kidneys activated, digestion improved. Mental sluggishness disappears. Vim, vigor, cheerfulness, soon return.

"Kola Astier restores lost strength," writes one doctor. Another doctor writes, "I have obtained most satisfactory results with Kola Astier in cases of physical and mental overstrain, nervous exhaustion and general rundown conditions."

Exhausted Nerves Cause of Many Ills

Do sudden noises make you jump * * * the radio set you on edge? Are you irritable, impatient * * * snappy with your family? Do you easily get the "blues"? Digestion poor? Spend restless nights?

KOLA ASTIER will help you. This wonderful preparation developed by Dr. P. Astier of Paris, is what leading European doctors themselves take when they get tired out and nervous and want quick new strength. It is a sustaining tonic that never lets you down—that leaves no depressing after-effect. It tones, strengthens, sustains, promotes abundant nerve-force.

You can quickly regain lost vigor and pep with KOLA ASTIER * * * the powerful, yet harmless vitalizer—the bracing tonic many doctors take themselves whenever they get exhausted and want quick, new strength.

PAR. 5. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents have represented directly and by implication that their medicinal preparation, Kola Astier, has therapeutic value in the treatment of disorders and conditions resulting from exhausted nerves and constitutes a competent and effective treatment for poor digestion and insomnia; that said preparation is a tonic which will strengthen, sustain, and promote abundant nerve force; that said preparation acts directly on the nerve centers, promotes new nerve force, and speeds up the functions of every organ; that said preparation will strengthen heart action, increase blood circulation, activate liver and kidneys, and improve digestion; and that its use will restore nerve force and restore lost strength.

PAR. 6. Respondents' preparation contains the extract of the kola nut in the proportion of 653 grams of extract of kola nut to 10 kilos of sugar. The dosage recommended by the respondents is 2 teaspoonfuls a day—1 teaspoonful 1 hour before the noonday meal and one about 1 hour before the evening meal. Based upon an analysis of this preparation, it contains 10.084 percent of caffeine and 0.03 percent of theobromine. Caffeine is the only active ingredient in respondents' preparation as 0.03 percent of theobromine is too small to have any appreciable effect, and, in the dosage recommended, the action of the theobromine would be negligible. The caffeine contained in respondents' preparation in the dosage recommended is approximately the same as the amount of caffeine contained in a weak cup of coffee. The value of said preparation is limited to that of a temporary stimulant and only to the extent of the stimulating effect obtained from a cup of coffee. This preparation has no therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves

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other than that afforded by a mild, temporary stimulant. It has no value as a tonic and cannot restore lost energy or lost strength and will not strengthen, sustain, or promote nerve force. The effect of this preparation is limited to the temporary stimulation of stored energy. The beneficial effect obtainable from the use of respondents' preparation upon poor digestion is negligible and might have a tendency to increase insomnia. The amount of caffeine introduced into the system through the use of respondents' preparation in the dosage recommended would have negligible effect upon the heart action or circulation. The diuretic action of both the caffeine and theobromine in said preparation is negligible and will have no effect in activating the liver and kidneys.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to said preparation, Kola Astier, has had and now has the capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations may be relied upon as an effective stimulant for exhausted nerves, heart, and circulatory system, and that it will restore lost energy and nerve force and have therapeutic value in relieving gastrointestinal disturbances and other conditions attributed to, or associated with, nervous conditions, and causes such members of the purchasing public to purchase substantial quantities of respondents' preparation because of such erroneous and mistaken beliefs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony, and other evidence in support of, and in opposition to, the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

Order

It is ordered, That the respondents, Kola Astier Corporation, a corporation, and Gallia Laboratories, Inc., a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their medicinal preparation designated "Kola Astier," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisements 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 respondents' preparation has any therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves other than that afforded by a mild, temporary stimulant.

b. That respondents' preparation is a tonic or that its use will restore lost energy or lost strength, or that it will sustain or promote nerve force.

c. That respondents' preparation constitutes a competent or effective treatment for poor digestion or insomnia.

d. That respondents' preparation has any reliable therapeutic value or beneficial effect upon heart action or the circulatory system.

e. That the diuretic action of respondents' preparation is sufficient to have therapeutic value in activating the liver and kidneys.

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 respondents' medicinal preparation, Kola Astier, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

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.

IN THE MATTER OF
FREEDOM CHEMICAL 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 4905. Complaint, Feb. 10, 1943—Decision, June 24, 1943

Where a corporation, engaged in interstate sale and distribution to jobbers, for resale to garages and service stations, of its "GO Below" antifreeze solution for automobile radiators, by means of advertisements in trade journals, folders, circular letters, streamers, and other advertising material, directly and by implication—

- (a) Represented falsely that its said product was a perfect permanent antifreeze for use in automobile and truck radiators, which contained a chemical called calcium bichlorinate, and which would not become gelatinous, gum up, crawl or seep, or cause any corrosive damage to automotive metals; that it was less corrosive thereto than ordinary tap water, and compared favorably in that respect with any known premium quality antifreeze sold in the United States; and that it was in a superior class from antifreeze solutions which had proven ruinous and costly in use;

The facts being that there is no such chemical as calcium bichlorinate, and product in question, which had a calcium chloride base, was inferior to antifreeze solutions with glycerin or alcoholic bases; caused seepage; was highly corrosive to automotive metals such as iron, steel, bronze, solder, copper, brass, and aluminum, and more so than tap water; and its other claims, noted above, were similarly false and misleading;

- (b) Represented that factual observations at the U. S. Bureau of Standards, Washington, D. C., on their tests of its product conducted simultaneously with tests of competitive products, substantiated all of its claims, and that said tests did not show any corrosion caused by its product to any cooling system metals and gaskets or rubber;

When in fact such observations did show corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines; and

- (c) Falsely represented that its said product had been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Co., Pittsburgh Plate Glass Co., and hundreds of other reputable commercial and university laboratories throughout the United States;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such false representations were true, thereby inducing such public to purchase substantial quantities of the product in question:

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

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

Mr. Jesse D. Kash for the Commission.

Stanley & Smoyer, of Cleveland, Ohio, for respondent.