

Syllabus

IN THE MATTER OF

ASSOCIATED LABORATORIES, INC., TRADING AS ALLIED
LABORATORIES, KELP-A-MALT COMPANY, AND SEEDOL
COMPANY

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

Docket 2979. Complaint, Nov. 12, 1936—Decision, July 20, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of its "Kelp-A-Malt Tablets"; through advertisements and depictions in newspapers and periodicals, and through radio broadcasts, directly and by implication—

- (a) Represented that through use of its product weak, emaciated, thin, and underweight persons could overcome such conditions; and that those who were without shapeliness could acquire attractive form and figure and develop well-proportioned bodies; and
- (b) Represented that such use enabled tired and run-down persons to regain normal health, strength, and vigor; and those who, by reason of undernourishment or underweight were suffering from such conditions as sour or acid stomach, gas and indigestion, to be relieved;

The facts being that the product in question was wholly incapable of accomplishing such results; as to the ingredients which formed the basis for said claims, there is no relation between deficiency of calcium and phosphorus and the conditions for which it recommended its product, and the amounts of vitamin B₁, iron and iodine in the product were insufficient to be of any therapeutic significance;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties of said product and benefits to be derived from its use, thereby causing substantial purchase of such product as a result, whereby trade was diverted unfairly to it from its competitors:

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

As respects the contention that the amounts of certain minerals and vitamins provided by the daily dosage of a certain product—which fell far short of supplying the minimum therapeutic dosage recognized as sufficient—equalled or exceeded the minimum daily requirements according to standards established by the Food and Drug Administration, and that product in question was a food rather than a drug and also a dietary supplement: Such contention had no material bearing upon the issues involved, in that standards referred to presupposed that individual was in good health and not suffering from a deficiency of any of the minerals or vitamins involved, whereas challenged advertisements were directed to those assumed to be deficient therein, in which cases the standards in question have no application; so that, while for those in health the product in question might serve as a dietary supplement and aid in preventing certain mineral or vitamin defi-

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ciencies, it was wholly incapable of any significant effect where deficiency already existed.

Before *Mr. Edward E. Reardon* and *Mr. John L. Horner*, trial examiners.

Mr. Clark Nichols and *Mr. R. P. Bellinger* for the Commission.

Mr. Francis Finkelhor, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co. and Seedol Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said 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, Associated Laboratories, Inc., for several years last past has been, and is located at 27-33 West Twentieth Street, New York, N. Y. It is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent, Associated Laboratories, Inc., has also engaged, and is now engaged, in business under the firm names and styles of Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., each of which trade names represents a company owned, controlled, and directed by respondent.

It has manufactured or caused to be manufactured, and either under its own name or in the name of Allied Laboratories, Kelp-A-Malt Co., or Seedol Co. has offered for sale and sold in commerce between the State of New York and various states of the United States other than the State of New York, and in the District of Columbia, a product which it has described and designated as Kelp-A-Malt Tablets. In the course and conduct of its business, respondent, Associated Laboratories, Inc., itself, or by and through one or the other of its three aforesaid trade names, has transported such product, or caused it to be transported when sold, to purchasers thereof located in the various states of the United States other than the State of New York and in the District of Columbia.

In the course and conduct of its business, respondent has been and now is engaged in substantial competition in interstate commerce with individuals, partnerships, and corporations who have been and are offering for sale or selling in such commerce, medicines, compounds, or medicaments containing or featuring iodine, calcium, phosphorus, magnesia, iron, copper, or other minerals or vitamins necessary for the preservation of individual health, or who have been or are offering for sale or selling in such commerce eggs, beef, lettuce, spinach, tomatoes, asparagus, or any other article or articles used as food by human beings containing iodine, potassium, phosphorus, calcium, iron, copper, magnesia, or other minerals, or vitamins, necessary for maintenance or preservation of the health of human beings, or who have been or are offering for sale or selling in such commerce products for gaining flesh, weight, strength, or for cure or relief of gas, gas pains, indigestion, tired feeling, run-down condition, or other distress, resulting from undernourishment or underweight.

PAR. 2. In soliciting the sale of its product "Kelp-A-Malt," respondent advertises in newspapers and other periodicals, and in pamphlets and circulars which it distributes to customers and prospective customers, and by radio broadcasts, in all of which it uses false statements and representations to the effect that by the use of "Kelp-A-Malt," because of its iodine, mineral, and vitamin content, persons who are weak, emaciated, skinny, or run down can recover or gain their normal weight, or gain weight at the rate of 5 pounds per week; that by the use of such product persons who are without shapeliness or grace of form can acquire attractive shape, and beautiful curves, and well-proportioned limbs; that use of such product enables persons tired and run down to recover or regain their normal health, strength and vigor, particularly to cause gas, gas pains, indigestion and the distress commonly experienced by the undernourished or underweight to disappear.

It has been and is the practice of respondent, in order to illustrate and emphasize the alleged merits of Kelp-A-Malt Tablets and the results attributed by them to its use, to offer them for sale by means of advertisements in which it has caused to be displayed and featured, pictures or photographs purporting to be pictures or photographs of individuals before and after using Kelp-A-Malt Tablets. The pictures or photographs purporting to represent the individuals before using Kelp-A-Malt Tablets have exhibited weak, emaciated, thin or so-called skinny persons, and the pictures purporting to be representations of the same individuals after using Kelp-A-Malt Tablets have exhibited strong, vigorous, robust individuals with graceful and

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shapely figures. Typical advertisements employed by respondent in order to attract the attention of purchasers and prospective purchasers, and to sell Kelp-A-Malt, have been the following, to-wit:

Kelp-A-Malt—Natural Mineral Concentrate From the Sea—Free from Drugs—Rich In FOOD IODINE and health Building Minerals Adds Firm Flesh—New Strength and Youthful Energy.

* * * * *

Supplies Newer Form of FOOD IODINE.

Kelp-A-Malt, only recently discovered, is an amazingly rich source of food iodine along with practically every mineral essential to normal well-being. It is a sea vegetable concentrate taken from the Pacific Ocean and made available in palatable pleasant-to-take tablet form. Six Kelp-A-Malt Tablets provide more food iodine than 486 pounds of spinach, 1,600 pounds of beef, 1,387 pounds of lettuce. Three Kelp-A-Malt tablets contain more iron and copper for rich blood, vitality and strength than a pound of spinach, 7½ pounds of fresh tomatoes—more calcium than 6 eggs, more phosphorus than a pound and a half of carrots—sulphur, sodium, potassium and other essential minerals.

Only when you get an adequate amount of these minerals can your food do you any good—can you nourish glands, add weight, strengthen your nerves, increase your vigor, vitality and endurance.

Try Kelp-A-Malt for a single week. Watch your appetite improve, firm flesh appear instead of scrawny hollows. * * * Feel the tireless vigor and vitality it brings you. It not only improves your looks, but your health as well. It corrects sour, acid stomach. Gas, indigestion and all the usual distress commonly experienced by the undernourished and the underweight disappear.

Here is good news for "Naturally Skinny" folks who can't seem to add an ounce no matter what they eat. A new way has been found to add flattering pounds of good, solid flesh and fill out those ugly, scrawny hollows even on men and women who have been underweight for years. 5 pounds in 1 week guaranteed * * * 15 to 20 pounds in a few weeks not uncommon.

This new discovery called Kelp-A-Malt now offers practically all the vitally essential food minerals in highly concentrated form. These minerals, so necessary to the digestion of fats and starches, the weight making elements in your daily diet, include a rich supply of precious FOOD IODINE.

Kelp-A-Malt's FOOD IODINE nourishes the internal glands which control assimilation, the process of converting digested food into firm, solid flesh.

* * *

Kelp-A-Malt, the new mineral concentrate from the sea—gets rights down to the cause of thin, underweight conditions and adds weight through a "2 ways in one" natural process.

Natural Iodine in Kelpamalt, New Mineral Concentrate, Must Correct Trouble with Tired, Careworn, Haggard-Looking Folks the First Week and Add 5 Lbs. or the Trial Is Free.

As the result of tests covering thousands of weakened, rundown, nervous skinny folks, science now claims that it is GLAND STARVING FOR IODINE that keep folks pale, tired out, underweight and ailing. When these glands—particularly the important gland which controls weight and strength—lack NATURAL PLANT IODINE even diets rich in starches and fats fail to add

needed pounds. That's why skinny people often have huge appetites yet stay weak and skinny.

Now, however, with the introduction of Kelpamalt—a mineral concentrate derived from a huge 90-foot sea vegetable harvested off the Pacific Coast—you can be assured of a rich, concentrated supply of this precious substance. 1,300 times richer in iodine than oysters, Kelpamalt at last puts food to work for you. Its 12 other minerals stimulate the digestive glands which alone produce the juices that enable you to digest fats and starches. 2 Kelpamalt tablets contain more iron and copper than 1 lb. of spinach or $7\frac{1}{2}$ lbs. of fresh tomatoes, more iodine than 1,386 lbs. lettuce, more calcium than 6 eggs.

It has also been the practice of respondent to engage in systematic disparagement of competitors by payment to proprietors of drug stores or to one or more of their clerks various sums of money to induce them to substitute the product of respondent, "Kelp-A-Malt," for other products requested by customers, accompanied by the representation that "Kelp-A-Malt" is better than any of them.

In truth and in fact the product "Kelp-A-Malt," offered for sale and sold by respondent by means of statements and representations hereinbefore set forth and reflected by its typical advertisements has not been and is not either a health-giving or flesh-producing product, nor does its use restore normal strength and health to so-called "run down" persons or persons with so-called tired feeling. Its use cannot and does not enable anyone to gain flesh or graceful shapes or alluring proportions. Its use cannot and does not convert a thin, emaciated, or scrawny person into a shapely and well proportioned person with curves or other attractive physical features. Kelp-A-Malt cannot and does not cure or relieve indigestion, sour or acid stomach, or effect elimination, relief, or cure of gas, or gas pains or other results, or distresses commonly experienced by the undernourished or underweight. If it should be that any of such conditions is the result of a deficiency of iodine, a diagnosis of such condition cannot be made by the individual or by any other person than a competent physician or other scientific specialist in thyroid troubles, syphilis or tuberculosis. Self diagnosis and use by any one for internal administration of iodine in any form to supplement the supply furnished by daily consumption of food is dangerous. It is a fact, well known to the medical profession, that a deficiency of iodine, the substance particularly featured in the advertisements of Kelp-A-Malt has no relationship, direct or indirect, with the production of gas, or gas pains or indigestion, or what is known as a run-down condition. The supply of iodine and of all other minerals and of vitamins necessary for normal health and strength is furnished by the ordinary or usual diet of the American people. There is no deficiency in the American dietary of iodine or of any of the minerals or vitamins necessary for the health

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of the individual. Nature has been prodigal in the gift to mankind of foods containing iodine and all of the essential minerals, including the various necessary vitamins. Iodine, the principal ingredient of Kelp-A-Malt, and which is featured as a new discovery and a new food medicine by respondent, is neither a new discovery nor a new food medicine. There is no such thing as new or old food iodine. Its use to produce weight, flesh, or to end indigestion, or sour stomach, or gas and gas pains is new, preposterous, harmful and dangerous. It has been known and used since ancient times for suitable purposes but not as an agency for gaining flesh. On the contrary, it is more likely to reduce weight than it is to increase it.

In truth and in fact, the pictures or photographs so displayed by respondent and which have been conspicuously featured, in its advertisements, have not been, were not, and are not pictures or photographs of individuals before and after using Kelp-A-Malt Tablets. Kelp-A-Malt Tablets constitute a so-called "shotgun" remedy. One deficient in iron may not need more calcium. The supply may be sufficient. One deficient in iodine may be deficient in none of the other minerals, yet Kelp-A-Malt Tablets administer all the body needs of everything according to representations of respondent. It offers a remedy for many abnormal or subnormal conditions, whether or not only one exists. Respondent offers, instead of eggs, beef, tomatoes, asparagus, lettuce, and spinach, a diet of Kelp-A-Malt Tablets.

An excess of some of the vitamins and minerals, particularly iodine, or calcium, may be dangerous in many conditions. The amount of iodine the body requires is so minute and it is so rare any individual fails to obtain it from his daily supply of food that except in such rare cases use of Kelp-A-Malt furnishes an excess, the effect of which, especially on the thyroid gland and metabolism, will produce a condition with alarming, if not fatal, results. Nor are Kelp-A-Malt Tablets better than many products which can supply and furnish in better and more scientific form, iodine, iron, calcium, phosphorus, copper, and other minerals, and also the various vitamins in such form that an excess of many need not be taken in order to supply a possible deficiency of one or more.

PAR. 3. There have been for many years last past and now are individuals, partnerships, and corporations who offer for sale and sell in interstate commerce and who truthfully describe Kelp or products or derivatives thereof, or products which contain iodine, iron, calcium, copper, magnesia, potassium, sodium, phosphorus, and each and all of the vitamins, either in foods, or in medicines, compounds and medicaments of various kinds and preparations for indigestion, sour stomach,

rundown condition, gas, gas pains, and other distresses commonly experienced by undernourished or underweight persons.

PAR. 4. The false representations of respondent set out in paragraph 2 hereof have had, and have, the capacity and tendency to mislead and deceive druggists, wholesale and retail, and the purchasing or consuming public, into the belief that they or one or more of them are true, and into the purchase of Kelp-A-Malt Tablets in reliance on such erroneous beliefs, or one or more of them.

They also have had and have the capacity and tendency to mislead and deceive the purchasing or consuming public into the belief that no other product, offered for sale for the same or similar purpose as Kelp-A-Malt, has had or has the capacity or ability to accomplish the said purposes, or any of them, such as are represented by respondent in connection with Kelp-A-Malt Tablets.

The aforesaid practices of respondent have had and have the capacity and tendency to divert trade to respondent from competitors mentioned in paragraph 3 hereof, and as a result of such practices respondent has been doing and is doing substantial injury to such competitors in course of the competition aforesaid.

PAR. 5. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 12, 1936, issued and subsequently served its complaint in this proceeding upon the respondent, Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. During the course of the hearings before said trial examiners, the Commission on October 2, 1942,

granted respondent's motion for leave to amend its answer theretofore filed, which amended answer was duly filed by the respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer and amended answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the complaint, and oral argument; 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. The respondent, Associated Laboratories, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 5112 Twenty-first Street, Long Island City, N. Y. The corporation trades under the names "Kelp-A-Malt Company" and "Seedol Company" as well as under its corporate name, and it formerly traded also under the name "Allied Laboratories." Respondent is now and for many years last past has been engaged in the manufacture, sale, and distribution of a product designated by it as "Kelp-A-Malt Tablets."

PAR. 2. In the course and conduct of its business, respondent causes and has caused its product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been in substantial competition with other corporations and with individuals engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of products intended and recommended for the same purposes as those for which respondent's product is intended and recommended.

PAR. 4. In the course and conduct of its business and for the purpose of promoting the sale of its product, respondent advertises its product by means of advertisements inserted in newspapers and periodicals having wide circulation in the various States of the United States. Respondent also advertises its product by means of radio continuities which are broadcast from various radio stations which

have sufficient power to and do transmit the programs emanating therefrom into various States of the United States other than those in which such broadcasts originate. Among and typical of the various statements and representations made by respondent with respect to its product through such advertising media are the following:

Natural Iodine in Kelpamalt, New Mineral Concentrate, Must Correct Trouble with Tired, Careworn, Haggard-Looking Folks the First Week and Add 5 Lbs. or the Trial Is Free!

As the result of tests covering thousands of weakened, rundown, nervous, skinny folks, science now claims that it is **GLANDS STARVING FOR IODINE** that keep folks pale, tired out, underweight and ailing. When these glands—particularly the important gland which controls weight and strength—lack **NATURAL PLANT IODINE**, even diets rich in starches and fats fail to add needed pounds. That's why skinny people often have huge appetites yet stay weak and skinny.

Now, however, with the introduction of Kelpamalt—a mineral concentrate derived from a huge 90-foot sea vegetable harvested off the Pacific Coast—you can be assured of a rich, concentrated supply of this precious substance. 1300 times richer in iodine than oysters, Kelpamalt at last puts food to work for you. Its 12 other minerals stimulate the digestive glands which alone produce the juices that enable you to digest fats and starches. 3 Kelpamalt tablets contain more iron and copper than 1 lb. of spinach or 7½ lbs. of fresh tomatoes, more iodine than 1386 lbs. lettuce, more calcium than 6 eggs. (Com. Ex. No. 53.)

Here is good news for "Naturally Skinny" folks who can't seem to add an ounce no matter what they eat. A new way has been found to add flattering pounds of good, solid flesh and fill out those ugly, scrawny hollows even on men and women who have been underweight for years. 5 pounds in 1 week guaranteed * * * 15 to 20 pounds in a few weeks not uncommon.

This new discovery called Kelp-A-Malt now offers practically all the vitally essential food minerals in highly concentrated form. These minerals, so necessary to the digestion of fats and starches, the weight making elements in your daily diet, include a rich supply of precious **FOOD IODINE**.

Kelp-A-Malt's **FOOD IODINE** nourishes the internal glands which control assimilation, the process of converting digested food into firm, solid flesh. * * * (Com. Ex. No. 58.)

Kelp-a-Malt, the new mineral concentrate from the sea—gets right down to the cause of thin, underweight conditions and adds weight through a "2 ways in one" natural process. (Com. Ex. No. 59.)

Kelp-a-Malt—Natural Mineral Concentrate From the Sea * * * Free from Drugs * * * Rich in FOOD IODINE and Health Building Minerals Adds Firm Flesh—New Strength and Youthful Energy

* * * * *

Supplies Newer Form of FOOD IODINE

* * * * *

Kelp-a-Malt, only recently discovered, is an amazingly rich source of food iodine along with practically every mineral essential to normal well-being. It is a sea vegetable concentrate taken from the Pacific Ocean and made available in palatable, pleasant-to-take tablet form. Six Kelp-a-Malt tablets provide

more food iodine than 486 pounds of spinach, 1,600 pounds of beef, 1,387 pounds of lettuce. Three Kelp-a-Malt tablets contain more iron and copper for rich blood, vitality and strength than a pound of spinach, $7\frac{1}{2}$ pounds of fresh tomatoes—more calcium than 6 eggs, more phosphorous than a pound and a half of carrots—sulphur, sodium, potassium and other essential minerals.

Only when you get an adequate amount of these minerals can your food do you any good—can you nourish glands, add weight, strengthen your nerves, increase your vigor, vitality and endurance.

Try Kelp-a-Malt for a single week. Watch your appetite improve, firm flesh appear instead of scrawny hollows. Feel the tireless vigor and vitality it brings you. It not only improves your looks, but your health as well. It corrects sour, acid stomach. Gas, indigestion and all the usual distress commonly experienced by the undernourished and the underweight disappear. (Com. Ex. No. 63.)

PAR. 5. Through the use of these representations and others of similar import and effect (including pictorial representations), respondent has represented, directly or by implication, that through the use of its product persons who are weak, emaciated, thin, and underweight can overcome such conditions; that through the use of such product persons who are without shapeliness of form or figure can acquire attractive form and figure and develop well-proportioned bodies; that the use of such product enables persons who are tired and run-down to recover or regain normal health, strength, and vigor; and that persons who by reason of undernourishment or underweight are suffering from such conditions as sour or acid stomach, gas, and indigestion may be relieved of such conditions through the use of respondent's product.

PAR. 6. Respondent's product is manufactured and sold in tablet form, and the prescribed dosage is as follows:

Dose for adults: 4 to 6 tablets three times daily after meals. Children over six: 2 to 3 tablets three times daily after meals. Tablets may be swallowed whole, or powdered and suspended in fruit juices, milk or water. (Com. Exs. No. 29-A, B.)

While the formula for the product has been changed a number of times by respondent, the changes have not been of a material nature insofar as the therapeutic properties of the product are concerned. An analysis made by the United States Food and Drug Administration discloses that at the time of the issuance of the complaint and for some two years thereafter, the product contained the following ingredients:

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Findings

<i>Ingredient</i>		<i>Grains per tablet</i>
Iodine as I ₂	0.011	
Chlorides as Cl ₂	1.056	—1.058
Calcium as CaO.....	0.237	—0.239
Magnesium as MgO.....	0.117	
Sodium as Na ₂ O.....	0.299	
Potassium as K ₂ O.....	0.363	—1.367
Iron as Fe ₂ O ₃ (containing traces of Al ₂ O ₃).....	0.008	
Arsenic as As ₂ O ₃	0.0005	
Phosphorus as P ₂ O ₅	0.155	
Sulphur as SO ₂	0.255	—0.256
Alkalinity of water soluble ash as K ₂ CO ₃	0.258	
Ash.....	3.579	—3.590
Acid insoluble ash (silica and talc).....	0.084	—0.086
Copper.....	0.0005	

(Com. Ex. No. 1).

For some two years, beginning in 1938, the formula was as follows:

Powdered kelp.....	1½ grains per tablet
Dicalcium phosphate.....	5½ grains per tablet
Powdered malt.....	1½ grains per tablet
Powdered cocoa.....	½ grain per tablet
Powdered sugar.....	½ grain per tablet
Iron and ammonium citrate.....	¼ grain per tablet
Copper sulphate.....	¼ ₄₀₀ grain per tablet
Vitamin B ₁	21 International Units
Flavoring.....	Q. S.

In addition to the calcium, phosphorus, iron and copper indicated above, there were also present iodine (from kelp) and traces of manganese. (Com. Ex. No. 5.)

A bottle of the tablets purchased from a retail drug store in New York City in September 1942, bore the following:

Each tablet contains 67 micrograms (22.2 USP units) of vitamin B₁ as thiamine, calcium (83 milligrams) and phosphorus (67 milligrams) as dicalcium phosphate; iron (2.8 milligrams) as iron ammonium citrate; copper sulfate, kelp, malt, sugar and flavoring. (Com. Ex. No. 29-B.)

PAR. 7. The ingredients which form the basis for the claims made by respondent for the therapeutic properties of the product are vitamin B₁, iron, iodine, calcium, and phosphorus. Insofar as calcium and phosphorus are concerned, the expert testimony in the record establishes that there is no relation between a deficiency of these minerals and the conditions for which respondent recommends its product. As for vitamin B₁, iron and iodine, the amount of these ingredients in the product is wholly insufficient to be of any therapeutic significance. The amount of vitamin B₁ in each tablet is approximately 22 International or USP (United States Pharmacopoeia) Units. As the directions for use provide for the taking of eighteen

tablets per day, this would make the total daily intake of vitamin B₁ 396 International Units. It is undisputed that where a deficiency of vitamin B₁ exists, the recognized minimum therapeutic dose of vitamin B₁ is 3300 International Units per day, continued over such period of time as may be necessary to overcome the deficiency. The amount of vitamin B₁ in respondent's product therefore falls far short of the minimum therapeutic dosage, and such amount is incapable of any therapeutic effect.

In the case of iron, the content of each tablet is 2.8 milligrams provided in the form of one-fourth grain of iron ammonium citrate, and one day's dosage of eighteen tablets would supply 50.4 milligrams of iron in the form of $4\frac{1}{2}$ grains of iron ammonium citrate. The recognized therapeutic dosage of iron ammonium citrate ranges from 45 to 135 grains per day. The daily dosage of $4\frac{1}{2}$ grains of iron ammonium citrate in respondent's product would be insignificant and without value from a therapeutic standpoint. As for iodine, the evidence establishes that the amount present in respondent's product is wholly insufficient to have any therapeutic value in the treatment of the conditions referred to in respondent's advertisements.

PAR. 8. Respondent's product is therefore wholly incapable of enabling persons who are weak, emaciated, thin, or underweight to overcome such conditions. The product is likewise incapable of enabling any individual to develop a well-proportioned body or acquire shapeliness of form or figure. It is ineffectual for overcoming tired or run-down conditions, and its use does not result in the recovery of health, strength, or vigor. The product is likewise incapable of exerting any therapeutic effects upon such conditions as sour or acid stomach, gas, or indigestion.

PAR. 9. It is urged by respondent that its product is a food rather than a drug; that it is a dietary supplement; and that the amounts of certain of the minerals and vitamins provided by the daily dosage of the product equal or exceed the minimum daily requirements of such minerals and vitamins according to standards established by the Food and Drug Administration. The Commission is of the opinion, however, that, assuming this to be true, the fact has no material bearing upon the issues involved in the present proceeding. The standards set up by the Food and Drug Administration presuppose that the individual is in good health and that he is not suffering from a deficiency of any of the minerals or vitamins in question. Respondent's advertisements, on the other hand, are directed to persons who are assumed to be deficient in such minerals or vitamins, and the conclusion is inescapable from the record that where a deficiency exists, the standards set up for minimum daily requirements have no appli-

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cation. In such cases nothing short of the recognized minimum therapeutic dosage of the minerals or vitamins is effective. For persons who are in normal health, respondent's product might serve as a dietary supplement and might aid in preventing certain mineral or vitamin deficiencies, but it is wholly incapable of any significant effect where a deficiency already exists.

PAR. 10. The Commission therefore finds that the representations made by respondent with respect to its product and with respect to benefits to be derived from the use of the product, as set forth in paragraphs 4 and 5, are erroneous, misleading and deceptive.

PAR. 11. The Commission finds further that the use by respondent of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties of respondent's product and the benefits to be derived from the use of such product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken beliefs so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 and amended answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, reports of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., or trading under any other name, and its officers, agents, representatives, and employees, directly or through any corporate or

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other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's product designated "Kelp-A-Malt Tablets," or any other product 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 representing, directly or by implication, through the use of words, pictorial representations, or both:

1. That the use of respondent's product will enable persons who are weak, emaciated, thin, or underweight to overcome such conditions.

2. That a well-proportioned body, or shapeliness of form or figure, can be acquired through the use of said product.

3. That the use of said product will enable persons who are tired or run down to overcome such conditions or recover or regain health, strength, or vigor.

4. That said product possesses any therapeutic value in the treatment of sour or acid stomach, gas, or indigestion.

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

PROGRESS TAILORING COMPANY, ALSO TRADING AS J. C. FIELD & SON; STONE FIELD CORPORATION, W. Z. GIBSON, INC., PIONEER TAILORING COMPANY, AND CERTIFIED TAILORING COMPANY

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

Docket 3747. Complaint, Mar. 28, 1939—Decision, July 20, 1943

Where a parent corporation and its four wholly owned subsidiaries with common officers and directors, engaged in competitive interstate sale and distribution of men's suits and coats which—manufactured by a fifth subsidiary from cloth furnished to it by the parent concern under an arrangement by which it charged the parent for cutting, trimming, and tailoring, and latter charged its four other subsidiaries for garments sold by them—were sold directly to the consuming public through canvassers equipped with order blanks, samples of materials, and advertising matter—

- (a) Represented in advertisements in newspapers and periodicals soliciting the services of salesmen that a "free" suit or suits would be given to them, through such statements as "Local agents wanted * * *." "If I send you this fine suit, will you wear it and show it to your friends," "I need a reliable man in your town," "I supply everything free of cost," and "Your own suits free of extra charge"; and thereby indicated that persons answering would receive a free suit which might be used by them in soliciting orders from customers for similar suits;

The facts being that when inquiry was received in response to such advertisement, circular was forwarded to the inquirer prominently displaying and stressing the word "free," but informing him for the first time that it would be necessary to obtain orders for a specified number of suits before receiving his own so-called "free" suit, and it was not until after sale of said number of suits that so-called "free" suit was delivered to him;

- (b) Falsely represented in advertising literature that "Supersheen Linings" and "Deluxe Trimmings", cost of which was included in the sales price paid by the purchaser for the garment bought, were "Furnished Free";
- (c) Falsely represented the size, extent and nature of their business through depiction of a large, four-story commercial or industrial building in their various advertising folders, and thereby caused members of the purchasing public to believe that they owned, operated, and exclusively occupied such building, of which in fact they occupied two floors only;
- (d) Falsely represented through statements in advertising material that all middlemen's expenses were eliminated, and that purchases were made from them at manufacturer's prices; when in fact a substantial part of the price paid by purchasers consisted of retailing costs and agents' commissions, and also charges of the manufacturing subsidiary and charge made by the parent concern against its various subsidiaries, as noted above;
- (e) Falsely represented that they were exclusively wholesale tailors, and that their garments were supplied to purchasers at wholesale prices; when in fact a substantial part, as aforesaid, of the purchase price was made up