

Complaint

IN THE MATTER OF

J. R. HODGES, TRADING UNDER THE STYLE AND FIRM
NAME OF AMOGEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4836. Complaint, Sept. 16, 1942—Decision, July 27, 1943*

Where an individual engaged in the advertisement and interstate sale and distribution of his "Amogen Tablets," through advertisements in circulars, pamphlets, and other written or printed matter, directly and by implication—

(a) Falsely represented that said "Amogen Tablets" were a cure or remedy and constituted a competent and effective treatment for biliousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath, and bad taste in the mouth; would eliminate excess bile, rid the system of poisons and enable one to maintain good health and avoid sickness; the facts being that product in question, essentially a laxative, had no therapeutic value in the treatment of said ailments in excess of affording temporary relief when such conditions were due to or caused by constipation; and

(b) Failed to reveal facts material in the light of such representations in that continued use of the product in question, which contained the mercury derivative calomel, would be likely to result in mercury poisoning and serious injury to health; use thereof as a laxative was potentially dangerous when taken by one suffering from abdominal pains or other symptoms of appendicitis; and frequent and continued use might result in dependence on a laxative;

With effect of deceiving a substantial number of the purchasing public into the mistaken belief that said representations were true and that said preparation might be used without ill effects, and to induce it because of such mistaken belief, to purchase its said preparation:

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

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

Mr. Carrel F. Rhodes for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that J. R. Hodges, individually, and trading under the style and firm name of Amogen Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it

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in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. R. Hodges, is an individual, trading under the style and firm name of Amogen Co., with his principal place of business located at 147 North Street, San Antonio, Tex.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Amogen Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale and distribution of a medical preparation designated as "Amogen Tablets," in commerce among and between the various States of the United States.

Respondent causes said medicinal preparation designated as aforesaid, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparation "Amogen Tablets," by the United States mails and by various other means in commerce, as commerce is defined by the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

AMOGEN TABLETS * * * designed to always get the bile and do you Good.

Many ailments are caused or made worse by biliousness, temporary constipation, Malaria, common Colds and fevers, poor Digestion, acid or gas on the stomach, eating and drinking too much, clogged Bowels, etc. Often these things cause Headaches, Neuralgia, Rheumatic or other pains and fevers, sallow Complexion, Pimples, Sores, Boils, skin irritations, a coated tongue, bad breath

or taste in the mouth and all such. Get the poison out of the system. Take one Amogen Tablet at bedtime and get a good cleansing.

A dime makes you a member of the Good Health Club. Don't get sick when so little may be the biggest investment you ever made. Amogen Company, 147 North St., San Antonio, Texas.

PAR. 4. Through the use of the aforesaid statements and others of similar import not specifically set out herein respondent represents, directly and by implication, that his said medicinal preparation is a cure or remedy of and constitutes a competent and effective treatment for biliousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fevers, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath, and bad taste in the mouth; that it will eliminate excess bile; will rid the system of poisons and will enable one to maintain good health and avoid sickness.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's said preparation is not a cure or remedy of nor does it constitute a competent and effective treatment for biliousness, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fevers, sallow complexion, pimples, sores, boils, or skin irritations. Said preparation is essentially a laxative and has no therapeutic value in the treatment of the above-enumerated ailments and conditions. It has no therapeutic value in the treatment of headaches, coated tongue, bad breath, and bad taste in the mouth in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or caused by constipation, and has no therapeutic value in ridding the system of excess bile in excess of affording temporary relief by reason of its laxative qualities. Its use will not rid the system of poisons nor enable one to maintain good health and avoid sickness.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact respondent's preparation contains calomel, a mercury derivative, and the continued use of said preparation over a long period of time will likely result in mercury poisoning and serious

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injury to the health of the user. Moreover, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, 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 false statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, J. R. Hodges, trading under the style and firm name of Amogen Co., charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. The respondent failed to file an answer.

Thereafter at a hearing held in the matter on April 16, 1943, a stipulation as to the facts agreed to by counsel for the Commission and respondent, subject to the approval of the Commission, was read into the record in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, which stipulation provided that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, and stipulation, said stipulation having been approved and accepted and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and

makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. R. Hodges, is an individual, trading under the style and firm name of Amogen Co., with his principal place of business located at 147 North Street, San Antonio, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing a medicinal preparation designated "Amogen Tablets" in commerce among and between the various States of the United States.

Respondent causes said medicinal preparation, so designated, when sold, to be shipped and transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said preparation "Amogen Tablets" by the United States mails, by circulars, pamphlets in commerce, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined by the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, and by means of circulars, pamphlets and other written or printed advertising matter disseminated in commerce, are the following:

AMOGEN TABLETS * * * designed to always get the bile and do you Good.

Many ailments are caused or made worse by biliousness, temporary, constipation, Malaria, common Colds and fevers, poor Digestion, acid or gas on the stomach, eating and drinking too much, clogged Bowels, etc. Often these things cause Headaches, Neuralgia, Rheumatic or other pains and fevers, sallow Complexion, Pimples, Sores, Boils, skin irritations, a coated tongue, bad breath or taste in the mouth and all such. Get the poison out of the system. Take one Amogen Tablet at bedtime and get a good cleansing.

A dime makes you a member of the Good Health Club. Don't get sick when so little may be the biggest investment you ever made. Amogen Company, 147 North Street, San Antonio, Texas.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents directly and by implication, that his said medicinal preparation, Amogen Tablets, is a cure or remedy of and constitutes a competent and effective treatment for biliousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath and bad taste in the mouth; that it will eliminate excess bile, will rid the system of poisons and will enable one to maintain good health and avoid sickness.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading.

In truth and in fact, respondent's said preparation, Amogen Tablets, is not a cure or remedy of nor does it constitute a competent and effective treatment for biliousness, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, or skin irritations. Said preparation is essentially a laxative and has no therapeutic value in the treatment of the above enumerated ailments and conditions. It has no therapeutic value in the treatment of headaches, coated tongue, bad breath and bad taste in the mouth in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or caused by constipation, and has no therapeutic value in ridding the system of excess bile in excess of affording temporary relief by reason of its laxative qualities. Its use will not rid the system of poisons nor enable one to maintain good health and avoid sickness.

PAR. 6. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation contains calomel, a mercury derivative, and the continued use of such preparation over a long period of time will likely result in mercury poisoning and serious injury to the health of the user. Moreover, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent and continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to the preparation Amogen Tablets, disseminated as aforesaid, has had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and that said preparation may be used without harm or ill effects, and to induce a substantial number of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the stipulation as to the facts entered into by and between counsel for the Commission and the respondent upon the record, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and 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 said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. R. Hodges, trading under the name Amogen Co., or under any other name or names, his agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his medicinal preparation designated "Amogen Tablets" or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement

- A. Which represents, directly or through inference, that said preparation

- (a) Is a cure or remedy for or has any therapeutic value in the treatment of malaria, common colds and fevers, poor digestion, acid

or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, or skin irritations;

(b) Has any therapeutic value in the treatment of biliousness or excess bile in the system, headaches, coated tongue, bad breath, or bad taste in the mouth, in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or are caused by constipation;

(c) Will rid the system of poisons or enable the user to avoid sickness or maintain good health.

B. Which fails to reveal that the continued use of said preparation over a long period of time may result in mercury poisoning, and that said preparation should not be used in cases of 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 warnings to the above effect.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal the dangerous consequences which may result from the use of the said preparation as required in said paragraph 1.

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

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IN THE MATTER OF
GREENING NURSERY COMPANY

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

Docket 3673. Complaint, Dec. 23, 1938—Decision, Aug. 3, 1943

Where a corporation, engaged in competitive interstate sale and distribution of fruit trees and other nursery products, to induce purchase thereof, and salesmen and agents to sell its products to the purchasing public—

- (a) Represented, directly and by implication, that it was the only nursery which used the bud selection method of grafting in the propagation of fruit trees, and that fruit trees thus propagated could only be procured from it and its salesmen, through such statements in circulars, newspaper advertisements and other publications as "BUD SELECTION, that remarkable, exclusive Greening feature!"; "For 26 years, Greening * * * have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field"; "Only Greening men can sell BUD SELECTED fruit trees"; and, "Non-competitive field all to yourself;

The facts being that bud selection is a general term used in the fruit industry and the method, known from earliest times, in various forms is followed by most nurserymen; its methods varied from those followed by practically all commercial nurserymen only in the keeping of records of selected trees or limbs; and while it had carried out extensive experimental work in selecting buds for propagation of deciduous fruit trees, and had developed scientific selection to the point where varieties of fruit could be improved thereby, and its method of bud selection might be more scientific than that employed by some of its competitors, said method was not, as aforesaid, exclusive with it;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products, and inducing a substantial number of salesmen and agents to deal in said nursery products, whereby trade was diverted unfairly to it from aforesaid competitors who truthfully advertised their products:

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

Before *Mr. John W. Addison* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Smith, Ristig & Smith, of Washington, D. C., for respondent.

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