

Complaint

IN THE MATTER OF
THOMAS E. COLLINS, TRADING AS THOMAS E.
COLLINS CO.

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

Docket 4816. Complaint, Aug. 17, 1942—Decision, Oct. 27, 1943

Where an individual engaged in interstate sale and distribution of his "Alimentone" medicinal preparation; through advertisements in periodicals and by circulars and other advertising media, directly or by implication—

- (a) Represented that his said preparation expelled or helped to expel mucus from the body, and provided symptomatic relief for catarrhal conditions generally, nasal catarrh, colds, bronchitis, nonallergic types of asthma, and mucus colitis; and
- (b) Represented that it toned or aided in toning the mucus membranes, fortified them against infection and was of therapeutic value in the treatment of inflammation thereof; was a cure or remedy for colds; and eliminated or aided in the elimination of toxic substances and deposits from the body tissues;

The facts being that while the product in question—composed of powdered wheat embryo, powdered dried skimmed milk, and vegetable concentrates—might have some food value, it was wholly without value as a therapeutic agent and would not accomplish the results so claimed for it;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such product as a result of the erroneous belief so engendered:

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. James A. Purcell*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Charles Reagh and *Mr. Howard Magee*, of San Francisco, Calif., 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 Trade Commission, having reason to believe that Thomas E. Collins, an individual, trading as Thomas E. Collins Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, Thomas E. Collins, is an individual, trading as Thomas E. Collins Co., having his office and principal place of business at 5036 Geary Boulevard, San Francisco, Calif.

The respondent is now, and for more than 2 years last past, has been engaged in the business of offering for sale, sale, and distribution of a medicinal preparation designated "Alimentone" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes his said product, when sold, to be shipped from his said place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of his said product, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning his said product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now causing the dissemination of, false advertisements concerning his said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, deceptive, and misleading statements and misrepresentations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in magazines and periodicals and by means of circulars and other advertising media, are the following:

Help Nature expel mucus for symptomatic relief in common colds, nasal catarrh, mucus colitis, non-allergic types of asthma and bronchitis, and ordinary catarrhal conditions in general with Alimentone.

Alimentone aids in toning the mucus membranes and fortifying them against the germs of infection.

It aids in cleansing the cell tissues of toxic impurities * * *

It is recommended in the dietary care of inflammations of the mucus membranes.

In cases of bronchitis and bronchial asthma, the use of Alimentone in the diet is followed with loosening and raising large amounts of mucus if there is an accumulation present in the bronchial tubes.

Many sufferers from constant colds have advised us that their colds disappeared when Alimentone was used.

The tendency of Alimentone is to bring about an effort to eliminate toxic deposits from the tissues commonly called "an attack."

The primary cause of the distress is not Alimentone but is the foul and depraved condition of the colon where toxic poisons originate. When Alimentone apparently is removing these poisons from the body with distress consequent in some instances, the user has good reason to rejoice, rather than to complain.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that the use of his product "Alimentone" expels or helps to expel mucous and provides symptomatic relief for catarrhal conditions, colds, nasal catarrh, mucous colitis and nonallergic types of asthma and bronchitis; that said product tones and aids in toning mucous membranes, fortifies mucous membranes against infection, cleanses and aids in cleansing cell tissues of toxic impurities and is of therapeutic value in the treatment of inflammations of the mucous membranes and has favorable effect on the secretion of mucous from mucous membranes; that it is a cure or remedy for colds; that said product affords relief for bronchial asthma and bronchitis; and that it eliminates toxic substances and deposits from the body and tissues.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid, are false, misleading and deceptive. In truth and in fact the use of respondent's said product will not expel or help to expel mucous or provide relief, symptomatic or otherwise, in the treatment of catarrhal conditions, colds, nasal catarrh, mucous colitis, and nonallergic types of asthma and bronchitis. It will not tone or aid in toning mucous membranes or fortify them against infection nor cleanse or aid in cleansing cell tissue of toxic impurities. It has no therapeutic value in the treatment of inflammation of the mucous membranes and has no effect whatsoever in promoting the secretion of mucous from mucous membranes. It will not afford relief in the treatment of bronchitis or bronchial asthma. It is not a cure or remedy for colds, and it will not eliminate toxic substances or deposits from the body and tissue.

PAR. 5. The use by respondent of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to his said product "Alimentone" 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 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 substantial quantities of respondent's said product.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Thomas E. Collins, an individual, trading as Thomas E. Collins Co., charging him with the use of unfair and deceptive acts and practices 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 before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and 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. The respondent, Thomas E. Collins, is an individual, trading as Thomas E. Collins Co., with his office and principal place of business located at 5036 Geary Boulevard, San Francisco, Calif. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a medicinal preparation designated by him as "Alimentone" and intended for use in the treatment of certain diseases and disorders of the human body.

PAR. 2. Respondent causes and has caused his product, when sold, to be shipped from his place of business in the State of California 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 his product in commerce among

and between the various States of the United States and in the District of Columbia.

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

Among and typical of the various statements and representations contained in such advertisements, disseminated and caused to be disseminated, as set forth above, by the United States mails, by advertisements inserted in magazines and periodicals, and by means of circulars and other advertising media, are the following:

HELP NATURE EXPEL MUCUS

for symptomatic relief in common colds, nasal catarrh, mucous colitis, non-allergic types of asthma and bronchitis and ordinary catarrhal conditions in general with

ALIMENTONE

Alimentone aids in toning the mucous membranes and fortifying them against the germs of infection. It aids in cleansing the cell tissue of toxic impurities * * *

* * * It is recommended in the dietary care of inflammations of the mucous membranes.

In cases of Bronchitis and Bronchial Asthma the use of Alimentone in the diet is followed with loosening and raising large amounts of mucus if there is an accumulation present in the bronchial tubes

* * * Many sufferers from constant colds have advised us that their colds disappeared when Alimentone was used.

The tendency of Alimentone is to bring about an effort to eliminate toxic deposits from the tissues, commonly called an "attack."

The primary cause of the distress is not Alimentone, but in a foul and depraved condition of the colon where toxic poisons originate. When Alimentone, apparently, is removing these poisons from the body, with distress consequent in some instances, the user has good reason to rejoice rather than to complain.

PAR. 4. Through the use of these statements and others of similar import, respondent has represented, directly or by implication, that his preparation expels or helps to expel mucus from the body; that it provides symptomatic relief for catarrhal conditions generally, nasal catarrh, colds, bronchitis, nonallergic types of asthma, and mucous colitis; that the preparation tones or aids in toning the mucous

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membranes and fortifies the mucous membranes against infection; that it is of therapeutic value in the treatment of inflammation of the mucous membranes; that it is a cure or remedy for colds; and that it eliminates or aids in the elimination of toxic substances and deposits from the body and tissues.

PAR. 5. Respondent's preparation, which is sold in both tablet and powder form, is composed of powdered wheat embryo, powdered dried skimmed milk, and vegetable concentrates. The expert testimony in the record, which is uncontradicted, establishes that while the preparation may have some food value, it is wholly without value as a therapeutic agent. It does not expel or help to expel mucus from the body. It is incapable of providing relief, symptomatic or otherwise, for catarrhal conditions, nasal catarrh, colds, bronchitis, any type of asthma, or mucous colitis. It does not tone or aid in toning mucous membranes, nor does it serve to fortify mucous membranes against infection. The preparation is of no therapeutic value in the treatment of inflammation of the mucous membranes. It does not constitute a cure or remedy for colds, nor does it possess any therapeutic value in the treatment of colds. It is wholly incapable of eliminating or aiding in the elimination of toxic substances or deposits from the body or tissues.

PAR. 6. The Commission therefore finds that the statements and representations made by respondent with respect to his preparation, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 7. The Commission finds further that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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 respondent,

testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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, Thomas E. Collins, individually, and trading as Thomas E. Collins Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparation designated "Alimentone," 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 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 said preparation expels or helps to expel mucus from the body.

(b) That said preparation affords relief for catarrhal conditions generally, or for nasal catarrh, bronchitis, any type of asthma, or mucous colitis.

(c) That said preparation tones or aids in toning the mucous membranes or fortifies the mucous membranes against infection.

(d) That said preparation possesses any therapeutic value in the treatment of inflammation of the mucous membranes.

(e) That said preparation is a cure or remedy for colds or possesses any therapeutic value in the treatment of colds.

(f) That said preparation eliminates or aids in the elimination of toxic substances or deposits from the body or tissues.

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 said preparation, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

IN THE MATTER OF
**WILLIAM J. COOKSEY (ALSO KNOWN AS ROSS DYAR),
OPERATING UNDER THE TRADE NAME OF WORLD'S
MEDICINE COMPANY.**

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

Docket 4847. Complaint, Oct. 14, 1942—Decision, Oct. 27, 1943

Where an individual engaged in interstate sale and distribution of his "World's Tonic" medicinal preparation, made up of some 25 ingredients, principal of which were the cathartics cascara, buckthorn, senna and aloes, and including also other bitter tasting ingredients tending to impart the properties of an appetiser, stomachic, or "bitter tonic"; by means of newspaper advertisements, radio broadcasts, circulars and other advertising media—

- (a) Represented, directly and by implication, that his said preparation constituted a remedy and effective treatment for pains in the back, side, or limbs, for premature aging, anemia, spots before the eyes, sallow skin, skin blemishes, night risings, loss of weight, gastritis, dizziness, mucous conditions, swollen joints, shortness of breath, kidney disorders, or sore or stiff muscles, and that said conditions were caused by constipation;

The facts being none of the aforesaid conditions are attributable to constipation, and his said preparation possessed no therapeutic value in the treatment thereof;

- (b) Represented, as aforesaid, that said preparation was a remedy and effective treatment for biliousness, headaches, gas bloating, sour stomach, indigestion, heartburn, fatigue, loss of appetite, bad breath, coated fuzzy tongue, nervousness, nausea, or stomach cramps, and that said disorders also were brought about by constipation;

The facts being that while such conditions might in some cases be due to constipation they are frequently due to systemic disorders not connected therewith, in which event the preparation in question would have no therapeutic value; while in those conditions caused by constipation, its therapeutic effect would be limited to such temporary relief as might be afforded through the partial evacuation of the intestinal tract, except that the preparation might, by reason of its bitter properties, afford a temporary stimulus in case of loss of appetite;

- (c) Falsely represented, as aforesaid, that his said preparation prevented colds, alkalinized the system, restored the activity of the liver, toned and stimulated the bowel muscles, and aided digestion; kept the stomach, liver, kidneys, bladder, and bowels operating properly; regulated the bowels and cleansed, soothed, and strengthened the stomach; enabled one to gain and retain health; provided the maximum of nourishment and strength from food, and supplied pep and energy;

- (d) Falsely represented that constipation causes an accumulation of poisons, of which its preparation would rid the system;

- (e) Represented through use of word "tonic" in designation "World's Tonic," that its said preparation was a general tonic, i. e., one serving to restore the normal tone of the body; the facts being that while it possessed to some