

Complaint

IN THE MATTER OF

KAY LABORATORIES, INC., AND JOSEPH P. KAYATTA

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

Docket 5054. Complaint, Sept. 24, 1943—Decision, Jan. 21, 1944

Where a corporation and an individual, its president, treasurer and principal stockholder, responsible for its operation and management, engaged in the interstate sale and distribution of their "Kaytonik" medicinal preparation —

- (a) Represented falsely by means of radio continuities and advertisements in newspapers that said preparation was a preventive of, and constituted a competent and effective treatment for, colds; and that it would prevent a cold from developing into grippe, influenza and pneumonia; build up strength, health and body resistance to disease, and conquer or destroy germs; and through use of the trade name "Kaytonik" that it was a general tonic; and
- (b) Represented falsely by selling and distributing their preparation under corporate name "Kay Laboratories, Inc.," that it was compounded or manufactured in a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts, i.e., in "laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine;

With capacity and tendency to mislead a substantial portion of the purchasing public into an erroneous belief that such representations were true, and with result of thereby inducing it to purchase preparation in question:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Francis J. O'Brien and *Mr. A. Norman LaSalle*, of Providence, R. I., 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 Kay Laboratories, Inc., a corporation, and Joseph P. Kayatta, individually, and as President and Treasurer of Kay Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kay Laboratories, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business at 150 Niagara Street, Providence, R. I.

Respondent, Joseph P. Kayatta, is an individual and is the principal stockholder, president and treasurer of Kay Laboratories, Inc., and also

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has his place of business at 150 Niagara Street, Providence, R. I. He directs the policies and is responsible for the operation and management of Kay Laboratories, Inc.

PAR. 2. Respondents are now and for more than two years last past have been engaged in the manufacture, sale and distribution of a certain medicinal preparation designated as Kaytonik, advertised as a remedy for colds and various other ailments of the human body.

In the course and conduct of their business the respondents cause said preparation, when sold, to be transported from their place of business in the State of Rhode Island to the 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 preparation in commerce among and between the various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning 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 are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 as hereinabove set forth by the United States mails, by radio and by advertisements inserted in newspapers are the following:

Don't let a cold get you down. Take KAYTONIK, the double action remedy that relieves coughs and colds and also conquers germs. * * * KAYTONIK not only helps to stop coughs but will also build your resistance.

The hypophosphites in KAYTONIK will help to ward off flu or grippe germs.

Stop that cold now. Don't let it develop into grippe, influenza or pneumonia. KAYTONIK helps you resist dangerous germs.

* * * It also builds health and strength to safeguard against colds.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented and now represent that said preparation is a preventative and constitutes a competent and effective treatment for colds; that its use will prevent a cold from developing into grippe, influenza and pneumonia; that it builds up strength, health and bodily resistance to disease and by its use germs can be conquered or destroyed. Through the use of the trade name "Kaytonik," respondents represent that said preparation is a general tonic.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not a preventative nor does it constitute a competent or effective treatment for colds. Its use will not prevent a cold from developing into grippe,

influenza, or pneumonia. It will not build up health, strength or bodily resistance to disease to any significant extent and it is not capable of conquering or destroying germs. Said preparation is not a tonic and when used as recommended will not act as a general tonic to the system.

PAR. 6. In addition to the claims set forth in paragraph 4 the respondents are making and have made false and misleading representations as to their business and professional status. By selling and distributing said preparation under the corporate name "Kay Laboratories, Inc.," the respondents, directly and by inference, represent that said preparation is compounded or manufactured in "laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine, that is, a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts. In truth and in fact, the said preparation is not prepared or manufactured in laboratories or in a laboratory within the common and usual conception of the word when used in connection with drugs and medical preparations.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated and caused to be disseminated as aforesaid in connection with the offering for sale and sale of said preparation in commerce 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 and representations are true, and into the purchase of substantial quantities of said preparation in commerce because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents 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 24, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Kay Laboratories, Inc., a corporation, and Joseph P. Kayatta, individually and as president and treasurer of Kay Laboratories, Inc., 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, at a hearing before an examiner of the Commission theretofore duly designated by it, the respondents, by a statement incorporated in the record, admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding came on for final hearing before the Commission on said complaint and the admission of the respondents, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Kay Laboratories, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Rhode Island with its principal place of business at 150 Niagara Street, Providence, R. I.

Respondent, Joseph P. Kayatta, is an individual and is the principal stockholder, president and treasurer of Kay Laboratories, Inc., and also has his place of business at 150 Niagara Street, Providence, R. I. He directs the policies and is responsible for the operation and management of Kay Laboratories, Inc.

PAR. 2. Respondents are now and for more than two years last past have been engaged in the sale and distribution of a certain medicinal preparation designated as Kaytonik, advertised as a remedy for colds and various other ailments of the human body. In the course and conduct of their business respondents cause said preparation, when sold, to be transported from their place of business in the State of Rhode Island to the 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 their 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, 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; and respondents have also disseminated, and have caused and are now causing the dissemination of false advertisements concerning said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by radio continuities and by advertisements inserted in newspapers, are the following:

Don't let a cold get you down. Take KAYTONIK, the double action remedy that relieves coughs and colds and also conquers germs. * * * KAYTONIK not only helps to stop coughs but will also build your resistance.

The hypophosphites in KAYTONIK will help to ward off flu or grippe germs.

Stop that cold now. Don't let it develop into grippe, influenza or pneumonia. KAYTONIK helps you to resist dangerous germs.

* * * It also builds health and strength to safeguard against colds.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, respondents have represented and now represent that said preparation is a preventative and constitutes a competent and effective treatment for colds; that its use will prevent a cold from developing into grippe, influenza and pneumonia; that it builds up strength, health and

bodily resistance to disease and by its use germs can be conquered or destroyed; through the use of the trade name "Kaytonik," respondents represent that said preparation is a general tonic.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation is not a preventative nor does it constitute a competent or effective treatment for colds. Its use will not prevent a cold from developing into grippe, influenza or pneumonia. It will not build up health, strength or bodily resistance to disease to any significant extent and it is not capable of conquering or destroying germs. Said preparation is not a tonic and when used as recommended will not act as a general tonic to the system.

PAR. 6. In addition to the claims set forth in paragraph 4, the respondents are making and have made false and misleading representations as to their business and professional status. By selling and distributing their said preparation under the corporated name "Kay Laboratories, Inc.," the respondents, directly and by inference, represent that said preparation is compounded or manufactured in "Laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine, that is, a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts. In truth and in fact, the said preparation is not compounded or manufactured in laboratories or in a laboratory within the common and usual conception of the word when used in connection with drugs and medical preparations.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and advertisements with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead 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 respondents' said preparation.

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 and the record, wherein the respondents admitted all the material facts set forth in the complaint and waived all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondents, Kay Laboratories, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, and Joseph P. Kayatta, individually and as an officer of Kay Laboratories, Inc., and his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their medicinal preparation, Kaytonik, 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:

1. Disseminating or causing to be disseminated any advertisement by means of 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 is a preventative or constitutes a competent or effective treatment for colds;

b. That the use of said preparation will prevent a cold from developing into grippe, influenza, or pneumonia;

c. That the use of said preparation will build up health, strength, or bodily resistance to disease or conquer or destroy germs.

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' preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Using the word "Kaytonik" as a trade name for the said preparation or otherwise representing that said preparation is a general tonic or will act as a general tonic to the system.

4. Using the word "Laboratories" or any other word of similar import or meaning in respondents' corporate name, or representing through any other means or device, or in any manner, that the respondents own, operate, or control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith.

It is further ordered, That the respondents and each of them 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.

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IN THE MATTER OF

GEORGE VON NIEDA, ET AL., TRADING AS
VON DRUG CO., ET AL.

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

Docket 4704. Complaint, Feb. 6, 1942—Decision, Jan. 26, 1944

Where three individuals, owners of a formula for "Von's Pink Tablets," which contained bismuth subnitrate, magnesium oxide and sodium bicarbonate, and which they caused to be manufactured in tablet form and transported in bulk from the place of manufacture to nine distributing concerns at their respective places of business in other states, to be bottled, labeled and sold by them to the purchasing public and to dealers in the various states; and said concerns; acting in cooperation with each other in advertising the same—

Represented falsely that they constituted a remarkable and effective treatment for stomach ulcers including those caused by hyperacidity; that use thereof brought prompt relief to long standing cases of stomach ulcers, which might be satisfactorily and easily thus treated at home, and restored the stomach content to a more correct chemical balance, tending to prevent acid ulcers from forming, helping those suffering therefrom to enjoy hearty eating; and would result in coating stomach ulcers or denuded surfaces of the stomach with a protective film of metallic powder;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and thereby induce it to purchase preparation in question:

Held, That said acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices.

Mr. S. F. Rose for the Commission.

Mr. David E. Bronson, of Minneapolis, Minn., for G. B. McGlenn and C. A. Revell.

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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 Com-

¹ Complaint is published as amended by order of Jan. 22, 1944 which, after reciting that —

Whereas, the complaint in this matter named George Von Nieda, an individual, trading as Von Drug Company, as the sole owner of the said Von Drug Company; and

Whereas, in the answer filed by the respondents it is stated that Sadie Von Nieda and Florence Beebe, individuals, not named as respondents, are copartners with the said respondent, George Von Nieda, trading as Von Drug Company and it appearing that the said Sadie Von Nieda and Florence Beebe, in a stipulation signed by them and all of the respondents named in the complaint, have stipulated that they are proper parties to this proceeding as copartners with George Von Nieda, operating as Von Drug Company and have agreed that any order issued by the Commission would be as binding on them as if they had been named in the complaint and served with a copy thereof, and the Commission having duly considered the answer and such stipulated facts, and the record herein, and being now fully advised in the premises.

Orders that the complaint be "amended by joining as respondents therein the said Sadie Von Nieda and Florence Beebe along with the respondent George Von Nieda, as copartners trading under the trade name, Von Drug Company"; that the proceeding be styled accordingly, as set forth in said amended order; and that the first sub-paragraph of paragraph 1 of the complaint and par. 2 of the complaint, be amended to read as set forth in said order, and as published herein.