

IN THE MATTER OF

TRANS-PAC SERVICES, INC. AND DORLAND
INTERNATIONAL, INC.

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

Docket 5039. Complaint, Sept. 1, 1943—Decision, June 7, 1944

Where a corporation, engaged in the interstate sale and distribution of its "OCA Pinkovels" and "OCA," together with its advertising agency, in advertisements in newspapers, radio continuities and circulars and other advertising material, all in the Spanish Language—

Represented that said preparation was a remedy and competent and adequate treatment for colds, use of which prevented the developments and complications of a cold, and that it overcame persistent pains in the head and back, and was a new preparation and harmless;

The facts being it had no effect on the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof; could not be depended upon to overcome persistent pains in the head and back, systemic disorders which cannot be successfully treated by an analgesic preparation; ingredients thereof had been used for many years in such products; and it was not harmless in that frequent and continuous use might be dangerous;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that said representations were true, and into the purchase of substantial quantities of said preparation as a result of such erroneous belief:

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

Mr. William L. Taggart for the Commission.

Viault & Viault, of New York City, for Trans-Pac Services, Inc.

Dannenberg & Hazen, of New York City, for Dorland International, Inc.

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 Trans-Pac Services, Inc., a corporation, and Dorland International, a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 233 West 14th Street in the city of New York, State of New York. It is now and has been for more than one year last past engaged in the business of offering for sale and selling a medicinal preparation known and designated as OCA Pinkovels and OCA.

Complaint

Respondent, Dorland International, is a corporation, organized and existing under the laws of the State of Delaware with its principal place of business located in R.C.A. Building, Rockefeller Center, the city and State of New York. This respondent is an advertising agency and as such is engaged in preparing, disseminating and causing to be disseminated advertising matter. It is the advertising representative of the respondent, Trans-Pac Services, Inc., a corporation, and as such aids in the preparation of advertising material used by the respondent, Trans-Pac Services, Inc., and in the dissemination thereof, including the advertising matter hereinafter described and set forth.

The respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, a corporation, act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 2. The respondent, Trans-Pac Services, Inc., causes said preparation, 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. This 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 and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, respondents, acting in conjunction and cooperation, as aforesaid, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said preparation by 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 of 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 by the Federal Trade Commission Act. Among and typical of the false and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements, inserted in newspapers, by radio continuities, and by circulars and other advertising material all in the Spanish language, the English translation of which is as follows:

STOP THAT COLD

BEFORE IT GETS THE BETTER OF YOU!

OCA Pinkovels act quickly—are harmless

A cold is such a little thing. But what consequences it can have! Why run the risk of a serious illness? And, of course, you will not wish to serve as a carrier of cold germs and infect your family, your friends and the public when you sneeze or cough.

Follow the example of thousands of persons. Take OCA Pinkovels at the first sign of a cold. The rapidity of the action of OCA is really surprising! Doctors recommend OCA as the modern relief for ordinary headaches, neuralgia, aching muscles and incipient colds.

Carry OCA with you always. It is harmless and does not create a habit.

Complaint

38 F. T. C.

8 HOURS IN BED
WITHOUT HAVING SLEPT 8 MINUTES!

OCA a New and Rapid Relief for Headache

Is there anything worse than a persistent headache? What would you not give for a few hours of calm repose? But you toss all night, and when you get up in the morning you are—more tired than when you went to bed!

Headaches come from many causes—nervous extenuation, stomach disorders, eye fatigue, excess—but there is an easy, rapid method of obtaining relief. Thousands of men and women take advantage of it.

Doctors recommend OCA Pinkovels not only for simple headaches but for any ordinary pain, whether nervous, muscular or one caused by a cold. OCA acts rapidly! Thousands of persons consider it indispensable.

Carry OCA with you always. It is harmless and does not create a habit.

NO ONE LIKES A PERSON WHO
ALWAYS COMPLAINS

Doctors Recommend OCA Pinkovels

So many women spend their lives complaining of pains which end up by becoming a calamity! Friends avoid them, and even their own family members lose patience with them. And they are worthy of pity, because they are suffering!

It is often a headache, the persistence of which excites your nerves, making you irritable and rendering your tasks and diversions difficult. Or a persistent backache—or severe shoulder pains. You sleep and eat poorly. You feel half dead!

So much suffering may be unnecessary. Why suffer and annoy others with your complaints? Doctors recommend OCA Pinkovels for all ordinary pains, whether of the head, nerves, muscles or from incipient colds. Thousands of women find relief in OCA.

OCA is harmless and does not create a habit.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein respondents represent directly that said preparation is a remedy for and constitutes a competent and adequate treatment for colds; that its use prevents the development and complications of a cold; that it overcomes persistent pains in the head and back; that it is a new preparation and is harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation neither prevents or mitigates a cold, is of no value in preventing the complications of a cold, and has no effect in the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof. Said preparation cannot be depended upon to overcome persistent pains in the head and back. Persistent pains are usually symptomatic of systemic disorders which cannot be successfully treated by an analgesic preparation. Respondent's product is not new. Its various ingredients have been used for many years in analgesic preparations. Said preparation is not harmless. Frequent or continued use may be dangerous.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said preparation has the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase

of substantial quantities of said preparation as a result of such erroneous or mistaken belief so engendered.

PAR. 7. 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 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 the 1st day of September, 1943, issued, and subsequently served its complaint in this proceeding upon respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 28, 1943, Dorland International, Inc., filed its answer herein, and on December 4, 1943, Trans-Pac Services, Inc., filed its answer admitting all the material allegations of fact set forth in said complaint. After the filing of answer by Dorland International, Inc., the Commission, by order entered herein, granted said respondent's motion for permission to withdraw its said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, except that the acts and practices admitted were limited to those engaged in prior to October 31, 1942, which said substitute answer was duly filed in the office of the Commission. Both of the aforesaid answers waive all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer of Trans-Pac Services, Inc., and the substitute answer of Dorland International, Inc., and the Commission, having duly considered the matter, and being 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, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 233 West 14th Street in the city of New York, State of New York. It is now and has been for more than one year last past engaged in the business of offering for sale and selling a medicinal preparation known and designated as OCA Pinkovels and OCA.

Respondent, Dorland International, Inc., is a corporation, organized and existing under the laws of the State of Delaware with its principal place of business located in R.C.A. Building, Rockefeller Center, in the city and State of New York. This respondent is an advertising agency and as such is engaged in preparing, disseminating and causing to be disseminated advertising matter. It was the advertising representative of the respondent, Trans-Pac Services, Inc., a corporation, and for some time prior to October 31, 1942, aided in the preparation of advertising material used by the respondent, Trans-Pac Services, Inc., and in the dissemination thereof, including the advertising matter hereinafter described and set forth.

The respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter found.

PAR. 2. The respondent, Trans-Pac Services, Inc., causes said preparation, 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. This 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 and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, respondents, acting in conjunction and cooperation, as aforesaid, have disseminated and have caused the dissemination of, false advertisements concerning said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of false advertisements concerning 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 by the Federal Trade Commission Act. Among and typical of the false and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers, by radio continuities, and by circulars and other advertising material all in the Spanish language, are the following, the English translations of which are as follows:

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OCA is harmless and does not create a habit.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein respondents represent that said preparation is a remedy for and constitutes a competent and adequate treatment for colds; that its use prevents the development and complications of a cold; that it overcomes persistent pains in the head and back; that it is a new preparation and is harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation neither prevents nor mitigates a cold, is of no value in preventing the complications of a cold, and has no effect in the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof. Said preparation cannot be depended upon to overcome persistent pains in the head and back. Persistent pains are usually symptomatic of systemic disorders which cannot be successfully treated by an analgesic preparation. Respondent's product is not new. Its various ingredients have been used for many years in analgesic preparations. Said preparation is not harmless. Frequent or continued use may be dangerous.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said preparation has the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of said preparation as a result of such erroneous or mistaken belief so engendered.

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 in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

38 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said 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.

It is ordered, That the respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of the medicinal preparation designated OCA Pinkovels and OCA, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from:

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 through inference, that said preparation —

(a) Constitutes a competent and effective treatment for colds; will mitigate a cold or prevent the complications of a cold or is of any value in the treatment of a cold in excess of temporarily relieving some of the symptoms thereof.

(b) Can be depended upon to overcome persistent pains in the head or back.

(c) Constitutes a new preparation.

(d) Is safe or harmless in use.

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 and the respective subdivisions thereof.

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

Order

IN THE MATTER OF
 AGRICULTURAL INSECTICIDE & FUNGICIDE
 ASSOCIATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, June 8, 1944

Order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decrees below referred to, in proceeding in question, in which original order issued on July 24, 1942 in Agricultural Insecticide & Fungicide Association et al., Docket 4145, 35 F. T. C. 201, and in which Circuit Court of Appeals for the Second Circuit, on December 23, 1943 in *Phelps Dodge Refining Corp. et al. v. Federal Trade Commission*, 139 F. (2d) 393, 37 F. T. C. 828, unconditionally affirmed the Commission's order as to the six petitioning corporate respondents, and reversed it as to petitioner Demmon, and thereafter on February 21, 1944 entered decrees in accordance with stipulation entered into by the Commission with the petitioning respondents only—

Modifying, as to said petitioning respondents named, said order, which required respondents therein enjoined, in connection with offer, etc., in commerce, of agricultural insecticides, fungicides, and related chemicals and items for similar usage, to cease and desist from entering into, continuing, directing, instigating, or co-operating in, "any common course of action," mutual agreement, etc., to fix, establish or maintain prices, whether on a delivered basis or otherwise, etc., or to make use of the various other practices as there specified; so that as to aforesaid named respondents the above quoted words are changed to read "cooperating in any agreed or planned common course of action"; and

Dismissing complaint as to respondent Demmon.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents named in the caption hereof, and certain stipulations of additional facts, and respondents having expressly waived all intervening procedure and hearing as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, 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, and having entered its cease and desist order herein on July 24, 1942; and, thereafter, the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., Stauffer Chemical Company, Inc., and R. Earl Demmon, having filed in the United States Circuit Court of Appeals for the Second Circuit their petitions for a review of the Commission's said order to cease and desist, entered on July 24, 1942; and, thereafter, on December 23, 1943, the said United States Circuit Court of Appeals for the Second Circuit having unconditionally affirmed the Commission's said order to cease and desist as to the said respondents, Phelps