
FINDINGS AND ORDERS, JULY 1, 1944, TO DECEMBER 31, 1944

IN THE MATTER OF

PABST PHARMACEUTICAL COMPANY, INC. DOING
BUSINESS AS PABST CHEMICAL COMPANY

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

Docket 4635. Complaint, Nov. 14, 1941—Decision, July 3, 1944

Social diseases, it is well recognized, should not be submitted to self-treatment by the lay public but, instead, require the supervision of a physician so that proper tests can be made to determine when the organism has been destroyed, and particularly so in the case of treatment sold for gonorrhea, which tends to diminish the visible symptoms and to lead the user into a false sense of security and the belief that the disease has been cured, since the failure thus to obtain adequate treatment may result in complications, such as prostatic infections and arthritis, and perhaps cause the infection of others.

Where a corporation engaged in interstate sale and distribution of its "Pabst Okay Special"; through statements and advertisements thereof displayed upon mirrors in public places, usually in public or semi-public toilets—

- (a) Represented that its preparation constituted a competent and effective treatment for the diseases or conditions of the urinary passage which cause unnatural discharges;

The facts being that, while balsamic drugs, included among its ingredients (the rest of which had diuretic properties), have the ability to lessen and apparently stop the discharge of pus connected with, and symptomatic of, gonorrhea, with possible recurrence of the discharge when the use of such drugs is discontinued, the ingredients of its preparation had no value in destroying the specific organism of gonorrhea and consequently could not be considered as either a cure or competent treatment for this disease, and did not constitute a competent or effective treatment for gonorrhea in women; and while prior to the advent of the sulphadiazole drugs some of such ingredients, particularly the balsamic drugs, were used in the treatment of said condition, but not as a cure, the medical profession generally has discarded the balsamic drugs as being ineffective in favor of some of the new sulfonamide compounds, such as sulfathiazole, which have been proven to be cures for the disease and which effectively destroy the specific organism causing it; and

- (b) Failed to reveal that use of such treatment, which tends to diminish the visible symptoms of the disease, leads the user into a false sense of security and may result in complications for him and infection of others;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation was a competent

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treatment for diseases and infections of the urinary passage, including gonorrhea, and thereby to induce it to purchase its said preparation:

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

Before *Mr. Edward E. Reardon* and *Mr. John P. Bramhall*, trial examiners.

Mr. L. E. Creel, Jr., *Mr. Merle P. Lyon* and *Mr. Clark Nichols* for the Commission.

Mr. Daniel R. Forbes, 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 Trade Commission, having reason to believe that Pabst Pharmaceutical Co., Inc., a corporation, doing business under the name and style of Pabst Chemical 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:

PARAGRAPH 1. Respondent, Pabst Pharmaceutical Co., Inc., doing business under the name and style of Pabst Chemical Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1115 North Franklin Street, Chicago, Ill.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of compounding, selling and distributing a medicinal preparation known and described as "Pabst Okay Special" in commerce between and among various States of the United States and in the District of Columbia. Respondent causes and has caused said product, when sold, to be transported from Chicago, Ill., to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said 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 its aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said 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, false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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, are the following:

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Price		Price
\$3.00	The Active Ingredients of	\$3.00
	PABST OKAY SPECIAL	

have been used for many years

WITH SATISFACTORY RESULTS

by physicians as part of their treatment in unnatural discharges due to infection of the urinary passage in both NEW CASES AND THOSE OF LONG STANDING. To be taken internally. No inconvenience or detention from business.

For sale by (Name and address of drug store.)
and all first class drug stores everywhere.

PAR. 4. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents that the active ingredients of its said preparation have been and are used by physicians generally with satisfactory results in the treatment and cure of all infections of the urinary passage and that the use of its preparation constitutes a competent treatment for all diseases and infections of the urinary passage.

PAR. 5. In truth and in fact the statements and representations of respondent hereinabove set out, and others similar thereto, are false and misleading. The active ingredients of respondent's said preparation are no longer used by physicians generally in the treatment of infections of the urinary passage and have not produced satisfactory results when used in the treatment of said infections. Respondent's preparation is not a competent treatment or cure for any diseases or infections of the urinary passage.

PAR. 6. The true facts are that the principal ingredients of respondent's preparation are Balsam Copaiba, Sandalwood Oil, Sweet Spirits of Nitre, Oil of Pennyroyal, Fluid Extract of Cubebs, Fluid Extract of Juniper Berries and Fluid Extract of Uva Urisi. Many years ago some physicians used some of the ingredients of respondent's preparation in the treatment of the infection of the urinary tract known as gonorrhea. However, the use of these drugs has long since been discontinued by reputable members of the medical profession and informed medical opinion recognizes at the present time that these drugs have no therapeutic value in the treatment of any of the diseases or ailments of the urinary tract. Modern scientists have now developed various drugs which are in fact specific remedies for many of the diseases of the urinary passage, including gonorrhea.

PAR. 7. Over a period of many years respondent has extensively advertised its product under the name "Pabst Okay Specific" and later under the name "Pabst Okay Special" as being a competent treatment and cure for infections and diseases of the urinary passage. Because of such widespread advertising the names "Pabst Okay Specific" and "Pabst Okay Special" have become identified in the minds of a substantial portion of the public as designating a product which constitutes a competent treatment for the cure of diseases and ailments of the urinary tract generally and particularly, gonorrhea.

PAR. 8. All of respondent's said advertisements are also false in that they fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual, and fail to reveal that the use of said preparation may result in serious and irreparable injury to health of the user. Users of respondent's said preparation suffering from diseases or infections of the urinary tract, including gonorrhea, may, as a result of respondent's failure to reveal essential facts, delay or forego adequate treatment for the diseases or infections from which they are suffering with the result that their conditions may be prolonged and greatly and irrevocably aggravated, and with the further result of grievous and irrevocable injury to their physical, mental and domestic well-being.

PAR. 9. The use by the respondent of the foregoing false and misleading representations, and the use by the respondent of the names "Pabst Okay Specific" and "Pabst Okay Special" 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 said preparation is a competent treatment for all diseases and infections of the urinary passage including gonorrhea and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

PAR. 10. The aforesaid acts and practices of 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 November 14, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Pabst Chemical Co., a corporation, under the name, style, and description of Pabst Pharmaceutical Co., Inc., a corporation, doing business under the name of Pabst Chemical Co., charging it 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 and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of Trial Examiner John P. Bramhall upon the evidence, and brief filed 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, Pabst Chemical Co., was incorporated under the laws of the State of Illinois on December 15, 1931, under the name of Pabst Pharmaceutical Co., Inc., and, from the time of its incorporation, traded under the name of Pabst Chemical Co. On January 22, 1942, the respondent amended its charter by changing its name to Pabst Chemical Co. The office and principal place of business of said respondent are located at 127 South Market Street, Chicago, Ill.

PAR. 2. Since the date of its incorporation the respondent has been engaged in the sale and distribution of a medicinal preparation known and described as "Pabst Okay Special" in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said product, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 its aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning its said 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 false advertisements concerning its said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 are the following statements appearing upon mirrors displayed in public places, usually in public or semipublic toilets:

Price		Price
\$3.00	The Active Ingredients of PABST OKAY SPECIAL have been used for many years WITH SATISFACTORY RESULTS	\$3.00

by physicians as part of their treatment in unnatural discharges due to infection of the urinary passage in both NEW CASES AND THOSE OF LONG STANDING. To be taken internally. No inconvenience or detention from business.

For sale by (Name and address of drug store.)
and all first class drug stores everywhere.

PAR. 4. Through the use of the foregoing statement, respondent represents that its preparation, Pabst Okay Special, constitutes a competent and effective treatment for the diseases or conditions of the urinary passage which cause unnatural discharges. Gonorrhea is the most common vene-

real disease the manifestations of which include infection of the urinary passage accompanied by unnatural discharge. These infections of the lower urinary tract where one sees pus escaping are usually due to the presence of gonococcus, the specific organism of gonorrhea.

PAR. 5. Respondent's preparation, Pabst Okay Special, has as its active ingredients balsam copaiba, oil sandalwood, oil copaiba, cubebs, uvauris, juniper berries, matico, and sweet spirits of nitre. The ingredients balsam copaiba, oil sandalwood, and oil copaiba are considered as balsamic drugs. The remaining ingredients have diuretic properties. Prior to the advent of the sulpha drugs, some of the ingredients of respondent's preparation, particularly the balsamic drugs, were used in the treatment of gonorrhea. These drugs were used, not as a cure for this disease, but for the purpose of reducing the discharge of pus from the lower urinary tract. The balsamic drugs have the ability to lessen and apparently stop the discharge of pus connected with, and symptomatic of, the condition of gonorrhea, with possible recurrence of the discharge when the use of such drugs is discontinued. The ingredients of respondent's preparation have no curative value in destroying the specific organism of gonorrhea and consequently cannot be considered as either a cure or competent treatment for this disease. The ingredients of this preparation have no curative effect and do not constitute a competent or effective treatment for gonorrhea in the female as it cannot remove infection from the small glandular structures, where it colonizes in the female.

The consensus of informed medical opinion is that the ingredients used in respondent's preparation are not competent or effective treatments for gonorrhea but are limited to the alleviation of the symptoms of pus formation associated with this condition. The disease of gonorrhea can be cured only by certain of the new drugs which have recently been developed, particularly some of the sulfonamide compounds, such as sulfathiazole. The medical profession generally has discarded the balsamic drugs in the treatment of gonorrhea as being ineffective and now uses drugs which are the newer developments of the science of drugs and which have been definitely proven to be cures for the disease of gonorrhea and which will effectively destroy the specific organism causing this disease.

PAR. 6. The advertisements disseminated by the respondent are also false in that they fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual. It is well recognized that social diseases should not be submitted to self-treatment by the lay public but, instead, require the supervision of a physician so that proper tests can be made to determine if and when the organism has been destroyed. This is particularly true when a treatment such as that sold by the respondent is used, since the effect of the use of this preparation tends to diminish the visible symptoms of gonorrhea, such as the discharge of pus, and leads the user into a false sense of security and the belief that the disease has been cured. The failure thus to obtain adequate treatment may result in complications, such as prostatic infections and arthritis, and perhaps cause the infection of others in the mistaken belief that the condition has been cured.

PAR. 7. The use by the respondent of the foregoing false and misleading representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparation is a competent treatment for diseases and infections of the urinary passage, including gonorrhea, and to induce a portion 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, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of Trial Examiner John P. Bramhall upon the evidence, and brief filed in support of the complaint (no brief having been filed by the 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, Pabst Chemical Co., a corporation, formerly known as Pabst Pharmaceutical Co., Inc., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pabst Chemical Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its preparation now designated Pabst Okay Special 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:

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—

(a) That respondent's preparation is a cure or remedy or constitutes a competent or adequate treatment for unnatural discharges due to infection of the urinary passage.

(b) That respondent's preparation has any curative value or constitutes a competent or effective treatment for any venereal disease, including gonorrhea, the manifestations of which include infection of the urinary passage accompanied by unnatural discharge.

(c) That respondent's preparation constitutes a competent or effective treatment for any condition generally recognized as a symptom of any venereal disease in such a manner as to represent or imply that said prepara-

tion constitutes a competent or effective treatment of the disease indicated by such symptoms.

(d) That respondent's preparation constitutes a competent or effective treatment for any venereal disease.

(e) That the ingredients of respondent's preparation are recognized by physicians as being a competent or effective treatment for unnatural discharges due to infection of the urinary passage or any venereal disease of which unnatural discharge may be symptomatic.

2. Disseminating or causing to be disseminated any advertisements 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 fails to reveal that the therapeutic value of respondent's preparation is limited to the reduction of the discharge of pus due to gonorrhea or other venereal diseases and that it will not cure such diseases or destroy the specific germ causing such diseases and that such diseases may be communicable to others even though the symptoms of discharge have apparently disappeared.

3. 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 respondent's preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to comply with the requirements set forth in paragraph 2 hereof.

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

B. L. MELLINGER DOING BUSINESS AS OVRHAUL
COMPANY

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

Docket 3713. Complaint, Feb. 14, 1939—Decision, July 18, 1944

Where an individual engaged in competitive interstate sale and distribution of its "Ovrhaul" product for use in automotive engines, composed of 25 to 28% of a mineral known as vermiculite in a heavy petroleum oil carrying agent, by advertisements in newspapers, magazines and other media, directly and by implication—

Falsely represented that use of his product in an automobile motor was the equivalent of overhauling the motor; that it checked piston slap and oil pumping, filled scores in the piston surfaces and cylinder walls, effected a substantial saving in oil consumption and substantially increased gasoline mileage, resulted in substantial savings in motor upkeep by making rebores and new ring jobs unnecessary; avoided the laying up of cars for repairs, put a "mineral plating" on worn parts, and restored or increased the power and "pep" of such motors;

The facts being, as established by tests by the Bureau of Standards, that use of the product has no beneficial effect upon the operation of the motor, any adhesive property which vermiculite might have was insufficient to plate metal surfaces or otherwise affect them to any material extent, and, while its use might result in increased compression pressure, such result, like that produced by carbon deposits, was due entirely to increase of deposits on the piston head and in the combustion chamber, and tended to decrease rather than increase power;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to said product and its results, whereby such public was caused to purchase substantial quantities of said product, and substantial trade was diverted unfairly to him from his competitors:

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

As respects the validity of claims in behalf of a product for use in automobile motors, use of which allegedly was the equivalent of and avoided the need for overhauling and reboring the motor and resulted in putting a mineral plating on worn parts and in restoring and increasing the motor's power and pep: Evidence in behalf of their validity consisting of road tests—generally inconclusive due to presence of a number of uncontrollable factors, such as temperature, wind, grade, traffic, surface, kind of tires, etc.—chassis dynamometer tests—which, though some of said factors are eliminated, cannot be considered as approximating in accuracy tests made by means of laboratory dynamometer and other testing equipment used by the National Bureau of Standards—testimony of automobile mechanics and members of the public—not all of whom experienced favorable results with the product—was insufficient to meet evidence introduced in support of the complaint consisting of a series of tests by said Bureau, for the more important of which the motors were supplied by the seller and claimant, and the application