

Complaint

IN THE MATTER OF

ULRICI MEDICINE COMPANY, INC., 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 4853. Complaint, Oct. 16, 1942—Decision, Oct. 18, 1944

Where two corporations, engaged in the manufacture and interstate sale and distribution of their medicinal preparation designated "Ceregen"; through advertisements in newspapers and by radio, circulars and other advertising media, directly or by implication—

- (a) Represented that their said preparation was a concentrated food, which would strengthen or fortify the system, restore and calm the nerves, renew energy, restore the vivacity of youth, and result in complete physical well-being; that it made one strong, mentally and physically, had substantial value in the treatment of anemia and would protect one's health; and
- (b) Represented that it was of substantial value during convalescence and would restore lost vigor resulting from illness; would aid in the recovery of lost energy and vigor resulting from mental and physical fatigue; would produce healthy nerves and a strong and healthy system; guarded and protected the health of expectant mothers; and was effective in relieving neurasthenia and nervous ailments generally;

The facts being that it was not a food; while it contained ingredients used by medical science in the treatment of certain ailments, the amounts thereof present were negligible, and it was wholly without therapeutic value except that, as a mild bitter stomachic it might stimulate the appetite;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and therapeutic value of their preparation, and thereby to cause its purchase of substantial quantities thereof:

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. W. W. Sheppard*, trial examiner.

Mr. William L. Taggart for the Commission.

Viault & Viault, of New York City, 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 Ulrici Medicine Co., Inc., a corporation, and Trans-Pac Services, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the 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, Ulrici Medicine Co., 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, New York, N. Y. 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 4-20 47th Avenue, Long Island City, N. Y. Prior to late in 1941 or early in 1942 the respondent, Trans-Pac Services, Inc., was known as the Oca-Antilles Company, Inc., the corporate name having been changed at said time to Trans-Pac Services, Inc.

PAR. 2. Prior to January, 1940, the respondent, Ulrici Medicine Co., manufactured, sold and distributed a medicinal preparation designated as "Ceregen," but since that date the manufacture, sale and distribution thereof has been carried on first by Oca-Antilles Co., Inc., and later and now by respondent, Trans-Pac Services, Inc.; the respondent, Ulrici Medicine Co., Inc., however, retained the ownership of the formula and trade name of said preparation. Since January, 1940, while the manufacture, sale and distribution of said preparation is carried on by the respondent, Trans-Pac Services, Inc., the respondent, Ulrici Medicine Co., Inc., is interested in said sale and distribution and cooperates with Trans-Pac Services, Inc., in the sale and distribution of said product.

Respondents cause said preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States, to purchasers in foreign nations and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of the aforesaid business, respondents, acting in conjunction and cooperation, 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:

Ceregen is the improved formula of Cerebrina Ulrici, a concentrated food recommended for strengthening the organic system.

Do you feel nervous, out of sorts, restless and do not know why? It is almost certain that you need to feed your nerves and blood. Smile at life. Be glad, calm yourself—take Ceregen.

To men prematurely old, exhausted by excess of work and to nervous, anemic women, burdened by worry, we recommend the taking of CEREGEN, the improved formula of Cerebrina Ulrici which helps to fortify tired systems and to restore excited nerves.

Ceregen is the improved formula of Cerebrina Ulrici, a powerful tonic recommended for renewing energy, restoring nerves and fortifying the system.

Young lady * * * Ceregen will help you recover the vivacity which accompanies youth and complete physical wellbeing at all times.

Enjoy life. Be strong physically and mentally. The tonic properties of Ceregen * * * are very rapidly noticed.

Ceregen * * * is recommended for weak men and all persons subject to anemia * * * Protect your health. Begin this very day to take Ceregen.

After an illness, take Ceregen. Ceregen will help you hasten your convalescence and recover lost vigor.

Young people! Mental and physical fatigue is the forerunner of premature old age. Ceregen will help you recover energy and vigor.

Life is a war of nerves. Those with stronger and calmer nerves win. Face life with healthy nerves and a strong and healthy system. Take Ceregen! Remember, old is he who wants to be, not he who takes Ceregen.

Future mothers. Take care of your system. Guard zealously your health and that of your future children. Take Ceregen.

Against neurasthenia and all nervous ailments. Ceregen * * * is successfully recommended.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondents represent, directly and by implication, that said preparation is a concentrated food for the nerves and blood; that its use will strengthen the organic system, help fortify tired systems, and restore and calm the nerves; that its use will renew energy, restore the vivacity of youth and result in complete physical wellbeing; that it makes one strong, mentally and physically; that it has substantial value in the treatment of anemia; that it will protect one's health; that it is of substantial value during convalescence and will restore lost vigor resulting from illness; that it will help one to recover lost energy and vigor resulting from mental and physical fatigue; that it will produce healthy nerves and a strong and healthy system; that it guards and protects the health of expectant mothers and that it is effective in relieving neurasthenia and all nervous ailments.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact said preparation is not a food in any sense of the word and particularly is not a concentrated food for the nerves and blood. It will have no significant effect in strengthening the organic system. Its use will not serve to fortify tired systems and restore and calm the nerves nor will its use renew energy, restore the vivacity of youth or bring about physical wellbeing. It will not make one strong, either mentally or physically. It has no substantial value in the treatment of anemia. It will not protect one's health. It has no substantial value when used during convalescence and will not restore lost vigor resulting from illness nor will it help one to recover lost energy and vigor resulting from mental and physical fatigue. It will not produce healthy nerves and a strong and healthy system. It has no significant value in protecting the health of expectant mothers and is not effective in relieving neurasthenia and nervous ailments.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said prepa-

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ration 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 and mistaken belief so engendered.

PAR. 7. The aforesaid acts and practices of 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 October 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Ulrici Medicine Co., Inc., and Trans-Pac Services, Inc., corporations, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, 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 answers 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 respondents 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. Respondent, Ulrici Medicine Co., 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, New York, N. Y. 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 602 West 52d Street, New York, N. Y. Prior to January, 1942, respondent, Trans-Pac Services, Inc., was known as The Oca-Antilles Company, Inc., the corporate name having been changed in January, 1942, to Trans-Pac Services, Inc.

For some time prior to January, 1940, respondent, Ulrici Medicine Company, Inc., was engaged in the manufacture, sale, and distribution of a medicinal preparation designated as "Ceregen." Since January, 1940, the manufacture, sale, and distribution of the preparation has been carried on primarily by the respondent corporation formerly known as Oca-Antilles Co., Inc., and now known as Trans-Pac Services, Inc. Respondent, Ulrici Medicine Co., Inc., has, however, retained the ownership of the trade name

and formula for the preparation, and cooperates with respondent, Trans-Pac Services, Inc., in the sale and distribution thereof.

PAR. 2. Respondents cause and have caused their preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States and in foreign nations. Respondents maintain and have maintained a course of trade in their preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning their 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 the dissemination of advertisements concerning their preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The advertisements were in the Spanish language.

Among and typical of the various statements and representations contained in the advertisements disseminated and caused to be disseminated, as set forth above, by the United States mails, by insertion in newspapers, by radio continuities, and by circulars and other advertising media, are the following (English translation):

Young lady: * * * Ceregen will help you to regain the proper vivacity of youth and complete physical well-being at all times. Ceregen is the improved formula of Cerebrina Ulrici, a concentrated food recommended to strengthen the system. * * * (Tr. p. 72, Comm. Ex. 26-P(3))

Do you feel nervous, out of sorts, restless, and you don't know why? It is almost certain that you need to feed your nerves and blood. Stimulate your life. Be glad and be calm! Take CEREGEN! * * * (Tr. p. 70, Comm. Ex. 26-M(8))

Men prematurely old, exhausted by work, excesses, nervous and anemic women burdened by worries, take CEREGEN, the improved formula of Cerebrina Ulrici. CEREGEN helps to fortify the tired system and to make excited or jangled nerves normal. * * * (Tr. p. 67, Comm. Ex. 26-G)

Young people! Mental and physical fatigue is a forerunner to premature old age. CEREGEN will help you to recover the vivacity which belongs to youth. CEREGEN is the improved formula of Cerebrina Ulrici, a powerful tonic recommended for renewing energy, making nerves normal, and fortifying the tired system. (Tr. p. 66, Comm. Ex. 26-C)

Enjoy life. Be strong physically and mentally. The tonic properties of CEREGEN * * * are noted very rapidly. * * * (Tr. p. 71, Comm. Ex. 26-N(11))

* * * CEREGEN * * * is recommended for weak men and for all persons susceptible to anemia. * * * Protect your health! Begin this very day to take CEREGEN! (Tr. p. 67, Comm. Ex. 26-F)

After an illness, take CEREGEN! CEREGEN will help you accelerate your convalescence and recover your lost vigor. * * * (Tr. p. 68, Comm. Ex. 26-H)

Life is a war of nerves. Those with stronger and more tempered nerves win. Face life with healthy nerves and with a healthy and strong system. Take Ceregen! Remember, he who wishes to be so is old but not he who takes Ceregen. * * * (Tr. p. 69, Comm. Ex. 26-M(7))

Future mothers! Take care of your system! Care zealously for your health and that of your future child! Take CEREGEN! * * * (Tr. p. 71, Comm. Ex. 26-N(12))
* * * Against neurasthenia and all nervous ailments, Ceregen * * * is highly recommended. (Comm. Ex. 10-A)

PAR. 4. Through the use of these statements and representations, and others of similar import, respondents have represented, directly or by implication, that their preparation is a concentrated food; that it will strengthen or fortify the system and restore and calm the nerves; that its use will renew energy, restore the vivacity of youth, and result in complete physical well-being; that it makes one strong, mentally and physically; that it has substantial value in the treatment of anemia; that it will protect one's health; that it is of substantial value during convalescence and will restore lost vigor resulting from illness; that it will aid in the recovery of lost energy and vigor resulting from mental and physical fatigue; that it will produce healthy nerves and a strong and healthy system; that it guards and protects the health of expectant mothers; and that it is effective in relieving neurasthenia and nervous ailments generally.

PAR. 5. The evidence establishes that, except for such value as it may possess as a mild, bitter stomachic, respondents' preparation is wholly without therapeutic value. While the preparation contains ingredients which are used by medical science in the treatment of certain ailments, the amounts of such ingredients present in the preparation are so small as to be negligible and wholly ineffectual from a therapeutic viewpoint. For example, the preparation contains certain quinine derivatives (cinchonine, cinchonidine, and quinine sulfate), but the total quantity of these derivatives present in the daily dosage of the preparation as prescribed by respondents (one tablespoonful three times per day) is only about $\frac{1}{100}$ of the recognized therapeutic dose of quinine. The preparation also contains caffeine, but the amount thereof is negligible. The daily dosage of the preparation would afford only about one-half as much caffeine as is contained in an ordinary cup of coffee. Again, the preparation contains iron phosphate; however, the amount of iron supplied by the daily dosage of the preparation would be only about $\frac{1}{100}$ to $\frac{1}{80}$ of the recognized therapeutic dose for anemia.

The only ingredient present in the preparation in sufficient quantity to afford any therapeutic benefit is fluid extract of nux vomica. Nux vomica is known in medical science as a bitter stomachic, its function being to give medicine a bitter taste for the purpose of stimulating the appetite. The amount of nux vomica present in the daily dosage of respondents' preparation (about one-half the dose usually prescribed by physicians) is probably sufficient to qualify the preparation as a mild, bitter stomachic, and in consequence, to afford some stimulus to the appetite. Aside from this, the preparation is incapable of affording any therapeutic benefit. Nor is the preparation a food.

The preparation will not strengthen or fortify the system, nor restore or calm the nerves. Its use will not renew energy, restore the vivacity of youth, nor result in physical well-being. The preparation is incapable of making one strong, either mentally or physically. It is without therapeutic value in the treatment of anemia. It is incapable of protecting one's health. It is of no therapeutic value during convalescence or in the resto-

ration of lost vigor resulting from illness, except insofar as its properties as a mild, bitter stomachic may stimulate the appetite. It is incapable of aiding in the recovery of lost energy or vigor resulting from mental or physical fatigue. The use of the preparation will not result in healthy nerves or a strong or healthy system. The preparation is likewise incapable of guarding or protecting the health of expectant mothers. It is without therapeutic value in the treatment of neurasthenia and other nervous ailments.

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

PAR. 7. The use by respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and therapeutic value of respondents' preparation, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation 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 answers of respondents, 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 respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ulrici Medicine Co., Inc., and Trans-Pac Services, Inc., corporations, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' medicinal preparation designated by them as "Ceregen," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated 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 represents, directly or by implication,

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- (a) That said preparation is a food.
- (b) That said preparation will strengthen or fortify the system, or cause the system to be healthy.
- (c) That said preparation will restore or calm the nerves, or cause the nerves to be healthy.
- (d) That the use of said preparation will renew energy, restore the vivacity of youth, or result in physical well-being.
- (e) That said preparation will make one strong, either mentally or physically.
- (f) That said preparation has any substantial value in the treatment of anemia.
- (g) That said preparation will protect one's health.
- (h) That said preparation is of any therapeutic value during convalescence, or in the restoration of lost vigor resulting from illness, except insofar as it may stimulate the appetite.
- (i) That said preparation will aid in the recovery of lost energy or vigor resulting from mental or physical fatigue.
- (j) That said preparation has any significant value in guarding or protecting the health of expectant mothers.
- (k) That said preparation will relieve neurasthenia or other nervous ailments.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

Syllabus

IN THE MATTER OF
THE CARLAY COMPANY AND CARL A. FUTTER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4898. Complaint, Jan. 29, 1943—Decision, Oct. 18, 1944

Where a corporation and an individual, officer and principal stockholder thereof, engaged in the interstate sale and distribution of caramel candy enriched or fortified with certain vitamins and minerals, which they designated "Ayds," intended for use in the removal of excess weight, and sold in 1½ pound boxes, together with printed directions prescribing the observance of one of three restricted diets; through statements in advertisements of their product in newspapers and periodicals, and in circulars, leaflets, display cards and other advertising media—

- (a) Represented, directly or by implication, that the use of their candy and "plan" provided an easy way or method whereby excess weight might be removed from the body, and that such reduction in weight was effected without the necessity of restricting the diet, through such statements as "Many overweights praise the AYDS Candy reducing plan. It is easy. It is pleasant. No drugs. No exercising. It is usually effective where overweight is caused by over-nutrition." "One or two delicious pieces eaten just before each meal . . . and AYDS Candy curbs the craving for rich fattening foods. AYDS contain vitamins A, B1 and D and other essential nutrients. The diet is reduced automatically without the usual effort . . . without weakening effects . . . without hunger pangs." "AYDS Candy helps supply Vitamins A, B1, and D to prevent deficiencies that might occur due to lessened appetite. * * *" and others of similar nature, along with such matter as "WOULD YOU LIKE TO LOSE UP TO 10 LBS. IN 5 DAYS? TRY THIS NEW HOME LEMON JUICE RECIPE WAY TO LOSE UGLY FAT!" "Here's marvelous news for women who are overweight! Now you can make a reducing supplement right in your own kitchen, to help you lose those ugly, unwanted pounds! It's so simple—so easy—and so effective! Some lose as much as 10 pounds in their first 5 days using this Plan!" "You never starve yourself. You use no drugs. You take no laxatives. You take no more exercise than you are accustomed to take. You eat plenty of healthful, satisfying foods. Yet you lose weight!"

The facts being that removal of excess weight cannot be accomplished through the use of their said candy and "plan," without dieting; except in the comparatively rare cases in which excess weight is due to some physical disorder it is almost invariably due to overeating, the only effective treatment for which is reduction of the food intake, particularly as to those foods having a high caloric value, and hence observance of a restricted diet; and while, as in the case of any sweet, the eating of said candy immediately preceding a meal may to some extent curb or dull the appetite and make it somewhat easier to refrain from overeating at that particular meal, such effect is only temporary; the desire for food will soon return, and, unless restrained and the diet adhered to, effort to reduce weight will result in failure; and use of their plan is not, as claimed by them, "easy," adherence to restricted diets such as prescribed by them being usually a difficult matter, particularly for overweight individuals, and requiring the exercise of an unusual amount of will power and self-restraint; and