

Complaint

IN THE MATTER OF

HAWKEYE SALES, INC. AND TIM LAKE

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

Docket 4919. Complaint, Feb. 23, 1943—Decision, Jan. 18, 1945

Where a corporation and its sales manager, engaged in the manufacture and interstate sale and distribution of their "Blu-V-Spray," and "Jermite," medicinal preparations for poultry; through statements in advertisements or in letters, circulars, leaflets and by other means,—

- (a) Falsely represented that use of their said "Blu-V-Spray" assured germ-free poultry, of greater weight and higher quality; would eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures, and avoid the possibility of ruining an entire flock of poultry by reason of sickness; was a competent and effective treatment for colds and other respiratory troubles of poultry; and would save the ives of the poultry and insure poultry against hazards of severe weather conditions;
- (b) Falsely represented that use of their said "Jermite" improved the physical fitness of poultry to the extent that the maximum amount of feed would be consumed and the full benefit thereof obtained; that it acted as an appetizer and stimulator when used in poultry feed and would aid in the proper digestion thereof; and that the use thereof with 20 pounds of buttermilk would give the same feeding results as 35 or 40 pounds of buttermilk without "Jermite"; and
- (c) Falsely represented that the combined use of "Blu-V-Spray" and "Jermite" insured substantial benefits worth hundreds of times the cost;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true and thereby into the purchase of substantial quantities of their said preparations:

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

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. R. P. Bellinger for the Commission.

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 Hawkeye Sales, Inc., a corporation, and Tim Lake, an individual, 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, Hawkeye Sales, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 615 Tenth Street, Des Moines, Iowa. Respondent, Tim Lake, is an individual, and acts as sales manager of the corporate respondent above

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named, with his business address the same as that of said corporate respondent and, as sales manager of said corporation, dominates and controls the sales policies thereof and is responsible for its advertising program, including especially the preparation, use and dissemination of the advertising representations and statements hereinafter referred to.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in manufacturing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a medicinal preparation designed for spraying poultry, designated as Blu-V-Spray, and a medicinal preparation designed as a feed supplement for poultry, designated as Jermite.

Respondents cause said preparations, when sold, to be transported from their aforesaid place of business in the State of Iowa to 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 preparations 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 preparations designated as Blu-V-Spray and Jermite, 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 their said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 and by advertisements in letters, circulars, leaflets and other media are the following:

As to Blu-V-Spray—

The small added expense of about $\frac{1}{20}$ th of 1% per poultry pound is regained many times in extra gain, higher quality and germ-free poultry.

Why not order out Blu-V-Spray and stop those gapers or the possibility of having gapers in your station.

Don't be "penny wise" and "pound foolish" by killing off the sick birds and possibly ruining the entire pack.

Blu-V-Spray * * * contains every essential ingredient necessary to cope with head colds and other respiratorial troubles.

This is the season when the weather changes over night. Why not prepare yourself by ordering our Blu-V-Spray today and use it regularly? Cold nights, warm days, any change in weather throws poultry off feed. Blu-V-Spray is not a miracle water and will not perform the impossible, but it will sure prevent unnecessary death loss. I really believe you can get better gains when the poultry is free from colds and other respiratorial troubles.

As to Jermite—

Like a human being, a chicken must be physically fit to look right and again Jermite

plays that important part of assisting the birds physically so that they can consume the maximum amount of feed and get the full benefit * * *.

* * * Without question you do need Jermite in the feed for that added appetizer, stimulator and helpful digestive action.

The use of buttermilk in your poultry station, of course, is not affecting your health nor the poultry's health but over-use is costing you extra money which is unnecessary and I do not believe you can get any better results through the use of 35 or 40 pounds of buttermilk without the Jermite than 20 pounds of milk plus one envelope of Jermite.

As to both Blu-V-Spray and Jermite—

The actual cost of using Jermite and Blu-V-Spray continuously by one of the large poultry packers in all of their houses averaged one one-hundredth (1/100) of 1¢ per poultry pound packed. I don't believe there is any insurance in the world written at that low cost and you must admit that Jermite and Blu-V-Spray together do produce substantial results which we know and have been proven by actual tests and are worth hundreds of times this cost.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondents represent and have represented that the use of the preparation Blu-V-Spray assures germ-free poultry of greater weight and higher quality; that said preparation will prevent the infestation of fowl with gape-worms and is a competent and effective treatment therefor; that its use will eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures and will avoid the possibility of ruining an entire flock of poultry by reason of sickness; that said preparation is a competent and effective treatment for colds and other respiratorial troubles in poultry; that its use will save the lives of poultry and constitutes an insurance of poultry against the hazards of severe weather conditions. That the use of the preparation Jermite improves the physical fitness of poultry to the extent that the maximum amount of feed will be consumed and the full benefit thereof obtained; that it acts as an appetizer and stimulator when used in poultry feed, will aid in the proper digestion of food and through the use of said product 20 pounds of buttermilk will give the same feeding results as 35 or 40 pounds when said product is not used, and substantial savings can thus be made in feeding costs. That the combined use of Blu-V-Spray and Jermite insures substantial beneficial results and are worth hundreds of times the cost.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact the use of the preparation Blu-V-Spray cannot assure germ-free poultry nor will its use assure poultry of greater weight or higher quality. Said preparation will not prevent infestation of fowl with gapeworms and is not a competent or effective treatment for gapeworms or the conditions caused thereby. Its use will not eliminate the necessity of killing sick poultry or the adoption of other cautionary measures in cases of sickness, and will not avoid the possibility of ruining an entire flock of poultry because of sickness. Said preparation is not a competent or effective treatment for colds and other respirational troubles in poultry. It is not an insurer of poultry against the hazards of severe weather conditions and cannot be depended upon to save the lives of poultry under such conditions. The use of the preparation Jermite will not substantially improve the physical fitness of poultry and will not improve the physical condition of poultry to the extent that the

minimum amount of food will be consumed and the full benefit obtained therefrom. Said product has not significant value as an appetizer, a stimulant or as an aid to proper digestion of food. The administration of Jermite in connection with 20 pounds of buttermilk will not give the same feeding results as 35 to 40 pounds of buttermilk when said product is not used and it cannot truthfully be stated that the use of said product will substantially reduce the amount of buttermilk necessary to produce the desired results nor result in substantial savings in feed costs. The combined use of Blu-V-Spray and Jermite cannot insure substantial beneficial results and it cannot truthfully be stated that any results obtained will be worth hundreds of times the cost or any number the times of the cost.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations, disseminated as aforesaid, with respect to their said preparations, 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 false statements and representations are true, and because of such mistaken and erroneous belief, to purchase substantial quantities of respondents' said preparations.

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 February 23, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced before an examiner 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, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief 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. (a) Respondent, Hawkeye Sales, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 615 Tenth Street, Des Moines, Iowa.

(b) Respondent, Tim Lake, is an individual, and acts as sales manager of Hawkeye Sales, Inc., with his business address at 615 Tenth Street,

Des Moines, Iowa. In his capacity as sales manager of the corporate respondent he dominates and controls the sales policies thereof and is responsible for the preparation, use, and dissemination of the advertising representations hereinafter set forth.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in manufacturing and in the sale and distribution in commerce between and among various States of the United States of a medicinal preparation designed for spraying poultry designated as "Blu-V-Spray," and also a medicinal preparation designated as "Jermite" which is administered by mixing it in the feed or water given to poultry. Respondents cause said preparations, when sold, to be transported from their place of business in the State of Iowa to purchasers thereof at their points of location in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated and now disseminate, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations designated as "Blu-V-Spray" and "Jermite," 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 their said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 above set forth by letters, circulars, leaflets, and other means, are the following:

Blu-V-Spray will penetrate into the membranes of the nasal passages and the respiratorial tract destroying all disease germs that heretofore have caused head colds, gapes, and other respiratorial troubles. The new Blu-V-Spray also has a high germicidal value and will penetrate the most minute cracks and crevices of the batteries either wood or steel and destroy certain disease germs that are often found in the batteries. * * * It should eliminate gapes, head colds, and other respiratorial troubles in their entirety and when used in conjunction with Jermite, I am sure you will get the best results you have ever had (Comm. Ex. 5).

* * * * *

Last week's storm caught a good many houses unprepared to cope with conditions that existed. Results were heavy losses through gapes and colds. The boys that were prepared and had BLU-V-SPRAY on hand reduced this hazard to a minimum. * * * Cold nights, warm days, any change in weather, throws poultry off feed. BLU-V-SPRAY is not a miracle water and will not perform the impossible but it will sure prevent unnecessary death loss (Comm. Ex. 8).

* * * * *

I don't believe there is any insurance in the world written at that low a cost and you must admit that JERMITE and BLU-V-SPRAY together do produce substantial results which we know and have been proven by actual tests and are worth hundreds

of times this cost. * * * Trusting you will start today insuring your poultry at a cost of 1/100 of 1¢ per poultry pound by using JERMITE and BLU-V-SPRAY * * * (Comm. Ex. 10).

* * * * *

The small added expense of about 1/20 of 1¢ per poultry pound is regained many times in extra gains, higher quality and germ-free poultry. Don't be "PENNY-WISE AND POUND-FOOLISH" by killing out the sick birds and possibly ruining your entire pack. Order Jermite and Blu-V-Spray today * * * (Comm. Ex. 11).

* * * * *

I really believe that the present cost and set-up of the Jermite—Blu-V-Spray combination is so low that every house should use it, especially when you realize the extra gains, quality, and acceptable poultry this combination helps produce (Comm. Ex. 12).

* * * * *

Like a human being, a chicken must be physically fit to look right and again Jermite plays that important part of assisting the birds physically so they can consume the maximum amount of feed and get the full benefits which you know produces gain, bloom, and top grades. * * * Do you know that Blu-V-Spray costs as little as 10¢ per gallon and contains every essential ingredient necessary to cope with head colds and other respiratorial troubles (Comm. Ex. 15).

* * * * *

The use of buttermilk in your poultry station, of course, is not affecting your health nor the poultry's health but over use is costing you extra money which is unnecessary and I do not believe you can get any better results through the use of 35 or 40 pounds of buttermilk without the Jermite than 20 pounds of milk plus 1 envelope of Jermite. Your saving on the reduction of buttermilk would be from 10¢ to 40¢ per bag of feed fed (Comm. Ex. 17).

Why not order out Blu-V-Spray and stop those gapers or the possibilities of having gapers in your station (Comm. Ex. 18).

* * * * *

You definitely should spray and without question you do need Jermite in the feed for that added appetizer, stimulator, and helpful digestive action (Comm. Ex. 21).

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represent and have represented that the use of the preparation Blu-V-Spray assures germ-free poultry of greater weight and higher quality; that its use will eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures, and will avoid the possibility of ruining an entire flock of poultry by reason of sickness; that said preparation is a competent and effective treatment for colds and other respiratory troubles of poultry; that its use will save the lives of the poultry and insure poultry against hazards of severe weather conditions; that the use of the preparation Jermite improves the physical fitness of poultry to the extent that the maximum amount of feed will be consumed and the full benefit thereof obtained; that it acts as an appetizer and stimulator when used in poultry feed and will aid in the proper digestion of feed; that the use of said product with 20 pounds of buttermilk will give the same feeding results as 35 or 40 pounds of buttermilk when Jermite is not used

with it; and that the combined use of Blu-V-Spray and Jermite insures substantial beneficial results worth hundreds of times the cost.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the use of the preparation Blu-V-Spray does not assure germ-free poultry, nor will its use assure poultry of greater weight or higher quality. Its use will not eliminate the necessity for killing sick poultry or the adoption of other precautionary measures in case of sickness, and will not avoid the possibility of ruining an entire flock of poultry because of sickness. Said preparation is not a competent or effective treatment for colds, gapes, or other respiratory troubles in poultry. It is not an insurer of poultry against the hazards of severe weather conditions and cannot be depended upon to save the lives of poultry under such conditions. The use of the preparation Jermite will not improve the physical fitness of poultry, and will not improve the physical condition of poultry to the extent that the maximum amount of food will be consumed and the full benefit obtained therefrom. Said product has no significant value as an appetizer, a stimulant, or as an aid to the proper digestion of food. The administration of Jermite in connection with 20 pounds of buttermilk will not give the same feeding results as 35 to 40 pounds of buttermilk when Jermite is not used, and the use of said product will not reduce the amount of buttermilk necessary to produce the desired results, nor will its use result in savings in feed costs. The combined use of Blu-V-Spray and Jermite does not insure substantial beneficial results, nor will the use of these preparations produce results worth hundreds of times the cost or any number of times the cost of such preparations.

PAR. 6. The use by respondents of the aforesaid false, deceptive, and misleading statements and representations with respect to their said preparations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and, because of such mistaken and erroneous belief, into the purchase of substantial quantities of respondents' said preparations.

CONCLUSION

The aforesaid acts and practices of 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, the answer of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Hawkeye Sales, Inc., a corporation, its officers, representatives, agents, and employees, and respondent, Tim Lake, an individual, his representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Blu-V-Spray or Jermite, or any products of substantially similar composition or possessing substantially similar properties whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That the use of Blu-V-Spray will result in germ-free poultry or poultry of greater weight or higher quality.

(b) That the use of Blu-V-Spray will make the killing of sick poultry or the adoption of other precautions unnecessary in cases of sickness or will prevent sickness ruining an entire flock.

(c) That Blu-V-Spray is a competent or effective treatment for colds, gapes, or other respiratory troubles in poultry.

(d) That the use of Blu-V-Spray will prevent sickness or loss of life of poultry due to weather conditions.

(e) That the use of Jermite will substantially improve the physical condition of poultry or will enable poultry to consume the maximum amount of food and obtain full benefit therefrom.

(f) That Jermite will materially improve or stimulate the appetite of poultry or aid poultry in the proper digestion of food.

(g) That the addition of Jermite to buttermilk fed to poultry will materially reduce the amount of buttermilk required or will thus result in any substantial saving in feed costs.

(h) That the concurrent use of Blu-V-Spray and Jermite will produce substantial beneficial results, or results worth hundreds of times the cost or any number of times the cost.

2. Disseminating or causing to be disseminated, by any means, any advertisement 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 Blu-V-Spray or Jermite, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That respondents shall, within 60 days after the 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.

Complaint

IN THE MATTER OF
DODGE, INCORPORATEDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5185. Complaint, June 24, 1944—Decision, Jan. 19, 1945*

Where a corporation engaged in the interstate sale and distribution of a New Testament and a Catholic prayer book, designated as "Shields of Faith" and "Armored Bibles", with a steel plate over the front cover, intended principally for use by members of the armed forces, size of which, $2\frac{3}{4}$ inch by $4\frac{1}{2}$ inch, would permit their being carried in the breast pocket of a uniform; by means of circulars, advertisements in magazines and other advertising literature, directly and by implication—

Represented that such "Shields of Faith" and "Armored Bibles" were capable of deflecting bullets and that the steel covering afforded protection from wounds and might be the means of saving the lives of soldiers, through such typical statements as "SHIELDS OF FAITH ARMORED BIBLES Capable of deflecting bullets, shrapnel and bayonet. Fits the uniform breast pocket" (accompanied by a picture of a book bearing the inscription "May the Lord Be With You"), and "COVERED WITH HEAVY STEEL PLATE—SUNRAY FINISH";

The facts being said books were not capable of deflecting bullets except in such isolated instances as where the steel cover might be struck from an extreme angle, or the velocity of the projectile was substantially spent before striking the book; in latter event any similar book without a steel cover would accomplish the same result in most cases; and, rather than affording any substantial protection, the steel cover created an additional hazard in that the impact thereon of a bullet passing through would distort latter so as to cause a more serious and painful wound than would the case without it;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public, including millions concerned for relatives and friends in the armed services, into the erroneous belief that said representations and implications were true, whereby many purchased the same:

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. Andrew B. Duvall, trial examiner.

Mr. William L. Pencke for the Commission.

Lord, Bissell & Kadyk, of Chicago, Ill., 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 Dodge, Inc., a corporation, herein-after 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. Dodge, Inc., 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 706 N. Hudson Avenue,