

IN THE MATTER OF

OSTREX COMPANY, INC. AND DAVID STEUERMAN AND
LILLIAN STEUERMAN TRADING AS STEUERMAN AD-
VERTISING AGENCY

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

Docket 4894. Complaint, Jan. 25, 1943—Decision, Mar. 21, 1945

Where two individuals who were the advertising agents of a corporation prior to its dissolution, and assisted in the preparation and dissemination of advertising material used by it in behalf of its medical preparation Ostrex, and one of whom owned and carried on the business after said dissolution and the death of the owner, her father; through advertisements in newspapers and periodicals and by other means, directly and by implication—

Represented that such conditions as an exhausted, worn-out rundown feeling and body weakness might not be attributable to age but might be due to body deficiencies of iron, Vitamin B₁, calcium and phosphorus; that said preparation contained a sufficient quantity of each of said ingredients to supply such deficiencies, and that use thereof would remedy the aforesaid conditions when they were due to such deficiencies; and that it contained tonics and stimulants which corrected subnormal conditions in persons over 40 when caused by said deficiencies;

The facts being it had no therapeutic value in the treatment of an exhausted, worn-out, and rundown feeling or body weakness, except insofar as such conditions—in many cases associated with old age, or result of disease, with no relationship to body deficiencies of iron or of calcium, phosphorus, and Vitamin B₁—were due to a body deficiency of iron; while said preparation did provide an adequate amount of iron in cases where there was actual deficiency thereof, it did not provide a therapeutic amount of the other substances, such as should be administered in cases of actual deficiencies thereof (though supplying the minimum daily nutritional requirement of Vitamin B₁, and amounts of calcium and of phosphorus which might be of assistance in preventing deficiencies in said minerals); and, while an iron tonic, it contained no ingredients generally designated as tonics and stimulants;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and of thereby inducing its purchase:

Held, That said 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.

Mr. Jesse D. Kash 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 Ostrex Company, Inc., a corporation, and David Steuerman, and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Com-

mission 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, Ostrex Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of California with its principal office and place of business located at 801 Second Avenue, New York, N. Y. This respondent is, and for more than one year last past has been, engaged in selling and distributing a medical preparation designated Ostrex. In the course and conduct of its business respondent, Ostrex Company, Inc., causes and has caused said medical preparation, when sold, to be shipped or transported from its source of supply located in Cleveland in the State of Ohio to purchasers thereof located in various other States of the United States. Respondent maintains and at all times herein mentioned has maintained a course of trade in its said medical preparation in commerce between and among the various States of the United States.

PAR. 2. Respondents, David Steuerman and Lillian Steuerman, are individuals, trading and doing business as Steuerman Advertising Agency with their office and principal place of business located at 205 East 42nd Street, New York, N. Y. These respondents operate an advertising agency and as such are engaged in formulating, editing, selling and distributing advertising matter. These respondents are the advertising representatives or agents of respondent, Ostrex Company, Inc., and prepare and assist in preparation of advertising material used by respondent, Ostrex Company, Inc., and disseminate and aid in dissemination of such advertising material, including the advertising material hereinafter set forth, in connection with the sale and distribution of the medical preparation hereinabove designated. Respondents act in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 3. In furtherance of the sale and distribution of the medical preparation sold and distributed by respondent, Ostrex Company, Inc., a corporation, the respondents have disseminated, and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning said medical preparation by means of and through the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 advertisements disseminated and caused to be disseminated, as hereinabove set forth, by and through the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

WAS OLD AT 56

Amazed! Feels Years Younger

"I'm 56. Lacked vim and pep. Ostrex tablets gave me pep that makes me feel years younger." B. O. Garner, New Washington, Ohio. OSTREX contains tonics, stimu-

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40 F. T. C.

lants often needed after 40—by bodies lacking iron, calcium, phosphorus, iodine, Vitamin B₁.

For men and women. A 73-year old doctor writes, "It did so much for patients I took it myself. Results fine." Introductory size only 35¢. Start feeling peppier and younger this very day. OSTREX—for that "after 40" let down.

Men, Women! Old at

40, 50, 60! Get Pep

Feel Years Younger, Full of Vim

Don't blame exhausted, worn out, run down feeling on your age. Thousands amazed at what a little peppering up with Ostrex will do. Contains general tonics often needed after 40. * * *

OLD? GET NEW VIM

With Iron, Calcium, Vitamin B₁

Men, Women, of 40, 50, 60, don't be old, weak, worn out, exhausted, Take Ostrex * * *.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import but not set out herein, all of which purport to be descriptive of the therapeutic properties of said medicinal preparation, respondents represent, directly and by implication, that said preparation is a competent and effective treatment and remedy for an exhausted, worn out, run down feeling and bodily weakness; that said symptoms or conditions are not attributable to old age but are caused by body deficiencies of iron, calcium, phosphorus, iodine and Vitamin B₁; that said preparation contains a sufficient quantity of each of said ingredients to supply such deficiencies; that it contains general tonics, and stimulants which correct sub-normal conditions in persons over forty years of age and causes them to feel younger and full of pep and vitality.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not effective treatment or remedy for and will have no therapeutic effect and value in the treatment of an exhausted, worn out and run down feeling nor will it provide effective relief for bodily weakness. Said conditions are ordinarily associated with old age or result from disease and in a great majority of cases they have no relationship to body deficiencies of iron, calcium, phosphorus, iodine and Vitamin B₁. Respondent's preparation does not provide a therapeutically adequate amount of iron, calcium, phosphorus, iodine and Vitamin B₁ such as should be administered in cases of actual deficiency of such substances in the body. Said preparation does not contain general tonics and stimulants of such a nature and in such amounts as to correct sub-normal conditions in persons over forty years of age and does not and can not cause them to feel younger and full of pep and vitality.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and 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 such statements and representations are true and to induce a substantial portion of

the purchasing public, because of such erroneous and mistaken belief, to purchase said medical preparation.

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 January 25, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Ostrex Company, Inc., a corporation, and David Steuerman and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act.

On March 5, 1943, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents, David Steuerman and Lillian Steuerman, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that said Commission may proceed upon said statement of facts, making its report stating these findings as to the facts and its conclusion based thereon, and enter this order disposing of the proceeding without presentation of argument or the filing of briefs, and the respondents expressly waived the filing of the report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted, and filed and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The corporate respondent, Ostrex Company, Inc., was legally dissolved by operation of law on January 2, 1943, but upon the dissolution of said corporation, Joseph Breyer, former president of said corporate respondent, carried on the business under the trade name of Ostrex Company. Upon the death of said Joseph Breyer on April 23, 1943, his daughter, the respondent Lillian Steuerman, became the beneficiary under his will and acquired all assets and property of said Ostrex Company, and since April 24, 1943, has been trading under the trade name of Ostrex Company. The place of business of said respondents is located at 801 Second Avenue, New York, N. Y.

PAR. 2. The respondent, Ostrex Company, Inc., during its existence, was engaged in selling and distributing a medical preparation designated Ostrex. In the course and conduct of its business said respondent caused said medical preparation, when sold, to be shipped or transported from its source of supply located at 2654 Lisbon Road, Cleveland, Ohio, to pur-

chasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintained a course of trade in said medical preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondents, David Steuerman and Lillian Steuerman, are individuals, trading and doing business as Steuerman Advertising Agency with their office and principal place of business at 205 East 42nd Street, New York, N. Y. These respondents operate an advertising agency and as such are engaged in formulating, editing, selling and distributing advertising matter. These respondents were the advertising representatives or agents of respondent, Ostrex Company, Inc., and prepared and assisted in the preparation of advertising material used by respondent and aided in dissemination of such advertising material hereinafter set forth, in connection with the sale and distribution of the medical preparation hereinabove designated.

PAR. 4. In furtherance of the sale and distribution of said medical preparation the respondents, David Steuerman and Lillian Steuerman, have disseminated and have caused the dissemination of advertisements concerning the said medical preparation by insertions in newspapers, periodicals and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondents also disseminated and have caused the dissemination of advertisements concerning said product by various means for the purpose of inducing and which are likely to induce, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by advertisements inserted in newspapers and periodicals and by other advertising media, are the following:

WAS OLD AT 56

Amazed! Feels Years Younger

"I'm 56. Lacked vim and pep. Ostrex tablets gave me pep that makes me feel years younger." B. O. Garner, New Washington, Ohio. OSTREX contains tonics, stimulants often needed after 40—by bodies lacking iron, calcium, phosphorus, iodine, Vitamin B₁. For men and women. A 73-year old doctor writes, "It did so much for patients I took it myself. Results fine." Introductory size only 35¢. Start feeling peppier and younger this very day. OSTREX—for that "after 40" let down.

Men, Women! Old at

40, 50, 60! Get pep

Feel Years Younger, Full of Vim

Don't blame exhausted, worn out, run down feeling on your age. Thousands amazed at what a little peppering up with Ostrex will do. Contains general tonics often needed after 40—by bodies lacking iron, vitamin B₁, calcium, Phosphorus.

OLD? GET NEW VIM

With Iron, Calcium Vitamin B₁

Men, Women, of 40, 50 and 60, don't be old, weak, worn out, exhausted. Take Ostrex. Contains tonics, stimulants, often needed after 40 by bodies lacking iron, calcium Vitamin B₁.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import but not set out herein, respondents, David Steuerman and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, represented, directly and by implication, that conditions such as an exhausted, worn-out, rundown feeling and body weakness may not be attributable to age but may be due to body deficiencies of iron, Vitamin B₁, calcium and phosphorus; that said preparation contains a sufficient quantity of each of said ingredients to supply deficiencies in the body and the use of said preparation will remedy the aforesaid conditions when they are due to these deficiencies; that said preparation contains tonics and stimulants which correct subnormal conditions in persons over 40 years of age when caused by deficiencies of iron, calcium, phosphorus and Vitamin B₁.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive and constitute false advertisements. In truth and in fact, respondents' preparation is not an effective treatment or a remedy for and would have no therapeutic effect and value in the treatment of an exhausted, worn-out, and rundown feeling nor will it provide effective relief for body weakness, except insofar as such conditions are due solely to a body deficiency of iron; that an exhausted, worn-out, rundown feeling is not always attributable to a body deficiency of iron but in many cases such conditions are associated with old age or result from disease which has no relationship to body deficiencies of iron or of calcium, phosphorus, and Vitamin B₁; that respondents' preparation does provide an adequate amount of iron in such cases where there is actual deficiency of iron in the body; that respondents' preparation does not provide a therapeutic amount of Vitamin B₁, calcium and phosphorus, such as should be administered in cases of actual deficiencies of such substances in the body, but that respondents' preparation does supply the minimum daily nutritional requirement of Vitamin B₁, and amounts of calcium and of phosphorus which may be of assistance in preventing body deficiencies in these minerals.

Respondents' preparation supplies the following active ingredients in the following quantities, in the daily dose of 8 tablets:

Iron Sulphate, Exsiccated	12 grains
Vitamin B (Thiamin Chloride)	333 U.S.P. Units
Tricalcium Phosphate	24 grains

Respondents' preparation does not contain any ingredients usually designated as general tonics or stimulants, but is an iron tonic.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said medical preparation.

CONCLUSION

The foregoing acts and practices of respondents, David Steuerman and Lillian Steuerman, trading as Steuerman Advertising Agency, 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 answer of respondents and a stipulation as to the facts entered into by the respondents David Steuerman and Lillian Steuerman, trading as Steuerman Advertising Agency, and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents David Steuerman and Lillian Steuerman, trading as Steuerman Advertising Agency herein, findings as to the facts and conclusion based thereon and an 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.

It is ordered, That the respondents, David Steuerman and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, or trading under any other name or names, their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of a medical preparation designated "Ostrex" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same 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 implication:

(a) That said preparation constitutes a remedy or an effective treatment for an exhausted, worn-out, run-down feeling or body weakness, or similar conditions, except when such conditions are due solely to a deficiency of iron in the body.

(b) That said preparation contains sufficient quantities of calcium, phosphorus and Vitamin B₁ so that, when taken as directed, it will provide an adequate or effective treatment for conditions caused by deficiencies in the body of such substances, or any of them.

(c) That said preparation contains any ingredient, other than iron, which acts as a tonic or stimulant.

(d) That an exhausted, worn-out, run-down feeling, or similar conditions, may not be due to old age.

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

It appearing to the Commission that the respondent corporation, Ostrex Company, Inc., has been dissolved, *it is ordered*, That the complaint be, and the same hereby is dismissed as to said respondent.

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IN THE MATTER OF

IRVING YANOWITZ AND BENJAMIN SOKOLOFF TRADING
AS GOTHAM PREMIUM NOVELTY COMPANY

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

Docket 5015. Complaint, July 22, 1943—Decision, Mar. 21, 1945

Where two partners engaged in competitive interstate sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise; in promoting the sale and distribution of their said products—

Made use of a method involving the distribution of advertising or sales circulars, which depicted and described the merchandise therein offered under the plan below set forth and as compensation to the operator of said plan, and which contained a pull card or pull tab device consisting of a number of tabs, each concealing the name and price of an article, for use under a plan by which the particular article and the price paid by the purchaser was determined by his chance selection of the particular tab, and the operator after remitting to said partners the total collected from the sale of the chances, was compensated by specified merchandise or, at his option, by the right to deduct one-third of said sum; and thereby

Supplied to and placed in the hands of their said operators or sales representatives— notwithstanding notice on the card which offered the purchaser the privilege of buying an article at the price listed on the back of each slip, or of declining to buy it, and which was inconsistent with the successful operation of the plan—the means of conducting lotteries in the sale and distribution of their said merchandise in accordance therewith, under which the article to be secured and the price to be paid therefor, and whether the purchaser secured an article of greater value than the regular price designated therefor, was determined wholly by lot or chance; contrary to an established public policy of the United States government and in violation of the criminal law, and in competition with many who are unwilling to use any such sales method;

With the result that many persons were attracted by their said sales method and by the element of chance involved therein and were thereby induced to buy and sell their said merchandise in preference to that offered for sale and sold by said competitors, whereby trade was unfairly diverted from their competitors to them:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. David Von G. Albrecht, 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 Irving Yanowitz and Benjamin Sokoloff, individually, and trading as Gotham Premium Novelty Company, hereinafter referred to as respondents, have violated the provisions