

IN THE MATTER OF
JOSEPH TRINER CORPORATION

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

Docket 5227. Complaint, Sept. 28, 1944—Decision, June 27, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of a medicinal preparation variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixir of Bitter Wine"—

- (a) Falsely represented by radio continuities and through advertisements in magazines and newspapers, that said preparation was a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, and insomnia; and that it cleansed the stomach and intestines and kept the intestines clean, raised the general vitality of the body, and increased the resistance of the body to germs, thereby preventing colds;

When in fact it had no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation; and

- (b) Failed to reveal facts material in the light of its representations and with respect to consequences which might result from use of said preparation under usual or prescribed conditions in that, as a laxative, it was potentially dangerous when taken by one suffering from abdominal pain, nausea or other symptoms of appendicitis;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation might be used at all times without ill effects, and thereby into the purchase of substantial quantities thereof:

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

Mr. Joseph Callaway for the Commission.

Kerner, Jaros & Tittle, 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 the Joseph Triner Corporation, a corporation, 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, Joseph Triner Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal place of business located at 1333-1345 South Ashland Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of a certain medicinal preparation, variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixir of Bitter Wine."

In the course and conduct of its business, respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to the 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 among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation 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 is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined 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 United States mails, by radio continuities and by advertisements inserted in magazines and newspapers are the following:

Triner's Bitter Wine with Vitamin B₁ is the surest refuge in stomach troubles.

If you have no appetite, faulty digestion, headache, nervousness and that chronic tired feeling, do you know what you need? The answer is simple. Nothing else but Triner's Bitter Wine with Vitamin B₁. This product will straighten you out.

It gives a good appetite, aids digestion, influences a healthy sleep.

It promotes healthy sleep because it cleanses the intestines and keeps them clean.

Where did I get that cold? It is often difficult to answer this seasonable question. It is better to improve your general disposition and to shut the door against all colds. A persistent cold means that the body is unable to resist the attack of germs. Raise your general vitality by the help of Triner's Bitter Wine which cleanses the stomach, promotes healthy appetite * * * and increases the resistance of your body.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

PAR. 5. The foregoing statements and representations are false, deceptive and misleading. Respondent's preparation is not a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the condition prescribed in said advertisements or under such conditions as are customary and usual. Respondent's preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, 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 statements and representations are true and that said preparation may be used at all times without ill effects and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the 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 September 28, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Joseph Triner Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Respondent filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Triner Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1333-1345 South Ashland Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale, and distribution of a certain medicinal preparation, variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁," and "Triner's Llixir of Bitter Wine." Respondent causes said preparation, 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, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation 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 is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined 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 United States mails, by radio continuities, and by advertisements inserted in magazines and newspapers, are the following:

Triner's Bitter Wine with Vitamin B₁ is the surest refuge in stomach troubles.

* * * * *

If you have no appetite, faulty digestion, headache, nervousness and that chronic tired feeling, do you know what you need? The answer is simple. Nothing else but Triner's Bitter Wine with Vitamin B₁. This product will straighten you out.

* * * * *

It gives a good appetite, aids digestion, influences a healthy sleep.

* * * * *

It promotes healthy sleep because it cleanses the intestines and keeps them clean.

* * * * *

Where did I get that cold? It is often difficult to answer this seasonable question. It is better to improve your general disposition and to shut the door against all colds. A persistent cold means that the body is unable to resist the attack of germs. Raise your general vitality by the help of Triner's Bitter Wine which cleanses the stomach, promotes healthy appetite * * * and increases the resistance of your body.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; and that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

PAR. 5. The foregoing statements and representations are false, deceptive, and misleading. Respondent's preparations is not a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia, and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

PAR. 6. The advertisements disseminated as aforesaid by the respondent constitute false advertisements for the further reason that they fail to

reveal facts material in the light of such representations, or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. Respondent's preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, 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 statements and representations are true, and that said preparation may be used at all times without ill effects, and into the purchase of substantial quantities of of said preparation because of such erroneous and mistaken belief.

CONCLUSION

The 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 and the answer of the respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Joseph Triner Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparation variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁," and "Triner's American Elixir of Bitter Wine," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name, do forthwith cease and desist from:

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 by implication:

(a) That said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia, or that it has any therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation.

(b) That said preparation cleanses the stomach or intestines or keeps the intestines clean.

(c) That the use of said preparation will raise the general vitality of the body, increase the resistance of the body to germs, or prevent or aid in the prevention of colds.

2. 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 fails to reveal that said preparation should not be used in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* that such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

3. 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 said 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.

IN THE MATTER OF
SCIENTIFIC APPARATUS MAKERS OF AMERICA, ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 3092. Order, June 23, 1945

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on August 25, 1941, 33 F. T. C. 1130; (2) the Circuit Court of Appeals for the Seventh Circuit, on February 29, 1944, in *Eugene Dietzgen Co. et al. v. Federal Trade Commission*, 142 F. (2d) 321, rendered its opinion, and on May 3, 1944 modified the same, on denial of rehearing, and on May 22, 1944 entered four separate decrees by which the Commission's said order to cease and desist was, with respect to said petitioning respondents only, modified, affirmed, and enforced; (3) the Commission on March 2, 1945¹ (a) modified original order of August 25, 1941, pursuant to said four court decrees and as to the respondents therein named only by requiring (A) said respondents, their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., to restrict, restrain, monopolize, hinder or suppress competition in the sale and distribution in commerce of prepared tracing papers, tracing cloths, drawing tools, and various other articles used by surveyors, engineers, builders, the drafting profession and others, *by doing any of the acts or things therein specified; and from doing any of such acts or things pursuant to any such understanding, etc.*; including among said acts, etc., thus prohibited, the fixing and maintaining of prices and terms and conditions of sale, and the exchanging of information among themselves with respect to prices, etc.; and (B) respondent association, the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of respondent association in carrying out or engaging in any of the acts and practices theretofore set forth; and particularly through adopting rules and regulations designed to prevent price deviations and through receiving and disseminating price lists; (b) as in original order, dismissed the complaint as to respondent Scientific Apparatus Makers of America and certain others named, for insufficient evidence—

Similarly modifying said original order, under the provisions of Section 5 (b) of the Federal Trade Commission Act as to the other respondents joined therein; dismissing the complaint, as before, as to said Scientific Apparatus Makers of America, etc.; and excusing respondents, upon whom instant modified order is served, from the filing within sixty days of new compliance reports.

MODIFIED 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, the testimony and other evidence taken before duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, briefs filed herein by the attorney for the Commission and attorneys for the respondents, and the oral arguments by the respective attorneys, and the Commission having made its findings as to the facts and its conclusion

¹ See *ante*, p. 169.