

IN THE MATTER OF

GEORGE F. HAUPTMAN, TRADING AS MARKET DRUG

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

Docket 5236. Complaint, Oct. 18, 1944—Decision, Oct. 1, 1945

Where an individual engaged in interstate sale and distribution of certain medicinal preparations designated by him as "Pep-o-tabs", consisting of brown and white tablets—

- (a) Falsely represented in advertisements in newspapers and cards, folders and circulars, directly and by implication, that said preparations, when used as directed by men over 35 years of age, would prevent them from feeling old, and would restore ambition, help Nature produce pep, vitality, and a new feeling of manly vigor;
- (b) Falsely represented through use of trade name "Pep-o-tabs" that use of said preparation would result in pep and a greater degree of vitality; and
- (c) Failed to reveal in aforesaid advertisements facts material in the light of such representations and material with respect to the consequences which might result from the use of said preparations under prescribed or customary conditions, in that the "Pep-o-tabs" preparation referred to as brown tablets is potentially dangerous because it might produce strychnine poisoning, irritation of the kidneys, and systemic phosphorous poisoning;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and thereby of inducing it to purchase substantial quantities of said preparation:

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.

Mr. B. G. Wilson for the Commission.

Mr. Alexander M. Hauptman, of Philadelphia, Pa., 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 George F. Hauptman, an individual trading as Market Drug, hereinafter referred to as respondent, has 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 George F. Hauptman is an individual trading as Market Drug, with his office and principal place of business located at 5900 Market St., Philadelphia, Pa.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the sale and distribution of certain medicinal

preparations consisting of brown and white tablets designated by him as "Pep-o-tabs," in commerce, between and among the various States of the United States and in the District of Columbia.

Respondent causes the said preparations when sold by him to be shipped from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said 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 his said business and for the purpose of inducing the purchase of his said preparations, respondent has disseminated, and is now causing the dissemination of, false advertisements concerning his said preparations by 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 his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, 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 insertion in newspapers circulated generally throughout the United States and by means of cards, folders, and circulars are the following:

Feel Old? Get PEP!

If you lack ambition to go places and do things, use PEP-O-TABS. HELP NATURE! NEW FEELING! Scientific preparation prescribed by doctors for men over 35 years of age.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that said preparations used as directed by men over 35 years of age will prevent them from feeling old; that said preparations will restore ambition, help nature produce pep, vitality, and a new feeling of manly vigor.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact, the use of respondent's preparations

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will have no selective effect for men over 35 years of age. They will not prevent a man from feeling old. The use of said preparations will not restore ambition or serve in any way to help nature provide pep, vitality, or a new feeling of manly vigor.

The use by the respondent of the trade name "Pep-o-tabs" is false, misleading, and deceptive in that it serves as a representation that the use of said preparations will result in pep and a greater degree of vitality, which is contrary to fact.

PAR. 6. The respondent's advertisements disseminated as aforesaid with respect to "Pep-o-tabs" constitute false advertisements for the further reason that said advertisements fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual.

In truth and in fact the preparation known as brown tablets is potentially dangerous because, when taken as directed, it may produce strychnine poisoning, irritation of the kidneys, and systemic phosphorus poisoning.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result 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 October 18, 1944, issued and subsequently served its complaint in this proceeding upon respondent, George F. Hauptman, an individual trading as Market Drug, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed his answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening proce-

dure and further hearing as to said facts, the 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 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 George F. Hauptman is an individual trading as Market Drug, with his office and principal place of business located at 5900 Market St., Philadelphia, Pa. He is now, and for more than two years last past has been, engaged in the sale and distribution of certain medicinal preparations consisting of brown and white tablets designated by him as "Pep-o-tabs."

PAR. 2. Respondent causes the aforesaid preparations, when sold by him, to be shipped from his place of business in the State of Pennsylvania 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 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 his said business and for the purpose of inducing the purchase of his said preparations, respondent has disseminated, and is now causing the dissemination of, false advertisements concerning his said preparations by means of 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 his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, deceptive, and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by means of the United States mails, by insertion in newspapers circulated generally throughout the United States, and by means of cards, folders, and circulars are the following:

Feel Old? Get PEP!

If you lack ambition to go places and do things, use PEP-O-TABS. HELP NATURE! NEW FEELING! Scientific preparation prescribed by doctors for men over 35 years of age.

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PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that said preparations, when used as directed by men over 35 years of age, will prevent them from feeling old, and that said preparations will restore ambition, help nature produce pep, vitality, and a new feeling of manly vigor.

PAR. 5. The foregoing representations are false, misleading, and deceptive. In truth and in fact, the use of respondent's preparations will have no selective effect for men over 35 years of age. They will not prevent a man from feeling old. The use of said preparations will not restore ambition or serve in any way to help nature provide pep, vitality, or a new feeling of manly vigor. Furthermore, the use by the respondent of the trade name "Pep-o-tabs" is false, misleading, and deceptive in that it serves as a representation that the use of said preparations will result in pep and a greater degree of vitality, which is contrary to fact.

PAR. 6. The respondent's advertisements disseminated as aforesaid with respect to "Pep-o-tabs" constitute false advertisements for the further reason that said advertisements fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, the "Pep-o-tabs" preparation referred to as brown tablets is potentially dangerous because, when taken as directed, it may produce strychnine poisoning, irritation of the kidneys, and systemic phosphorus poisoning.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive advertisements, disseminated as aforesaid, has the tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, misleading, and deceptive advertisements and representations are true, and to induce the purchasing public to purchase substantial quantities of respondent's preparation as a result of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing 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 the respondent, George F. Hauptman, trading as Market Drug, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of medicinal preparations consisting of brown and white tablets now designated as "Pep-o-tabs," or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, 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 by implication:

(a) That the use of said preparations by men will prevent them from feeling old.

(b) That the use of said preparations will restore ambition, or in any manner will produce or assist in producing pep, vitality, or a new feeling of manly vigor.

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 the preparation known as brown tablets, when taken as directed, may produce strychnine poisoning, irritation of the kidneys, and systemic phosphorus poisoning.

3. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondent, George F. Hauptman, trading as Market Drug, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other devices, in connection with the offering for sale,

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sale, and distribution in commerce of medicinal preparations now designated as "Pep-o-tabs," or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from using the name "Pep-o-tabs," or any other name of similar import, to designate, describe, or refer to said preparations.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

FRIGID CHEMICAL CORPORATION AND
HOWARD Y. HODGE

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

Docket 5248. Complaint, Nov. 17, 1944—Decision, Oct. 2, 1945

Where a corporation and its president, who controlled it, engaged in the production and interstate sale and distribution of an anti-freeze solution for use in automobile radiators, designated as "Kant Freez", "Frigid", or "Frigid Anti-Freez"—

- (a) Falsely represented through statements in letters, pamphlets, charts, labels, and other advertising material that they had a factory at Stroudsburg, Pa., a warehouse at Allentown, Pa., and a business office in New York, N. Y.; when in fact their entire business was carried on from a single room of moderate size in Stroudsburg, where they had containers and simple equipment sufficient for the mixing or compounding of not more than 50 gallons daily of their said anti-freeze solution;
- (b) Represented as aforesaid that their said anti-freeze solution was a safe and suitable product for use as anti-freeze protection for automobile radiators, which would not cause leaks, or attack, corrode, or rust any kind of metal, rubber or paint, or clog the passages in the cooling systems of automotive engines;

The facts being that their said product, as shown by analysis of the Bureau of Standards, was not, as contended, composed principally of an aqueous solution of calcium phosphate (tertiary), but contained 29.3 percent calcium chloride with small amounts of intended corrosion inhibitors added and, as such solution, had a highly injurious effect on the cooling and ignition systems of automobile engines, would cause serious corrosion of the water pump, radiator, and particularly any aluminum parts such as cylinder heads, and partial or complete stoppage of the water passages, especially in the radiator, with resultant overheating; had a tendency to "creep", whereby it might get into the engine cylinders and cause damage to many engine parts; might cause rapid erosion of the water pump impeller shaft and soon result in spraying the solution over the outside of the engine, where, being a good conductor of electricity, it might short-circuit the ignition system and necessitate replacement thereof; and

- (c) Misleadingly and deceptively failed to inform of the danger of such damaging effects, the general public, accustomed to believe that products generally known and designated as "anti-freeze" solutions and advertised and offered to the public as such, may be used with safety in the cooling system of an internal combustion engine and will not cause rust, corrosion, clogging, or other injury;

With 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 to induce the purchase of their said product:

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.