

Complaint

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IN THE MATTER OF

CHARLES W. HAYSSSEN, TRADING AS
H. H. HAYSSSEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4402. Complaint, Dec. 5, 1940—Decision, Oct. 8, 1945*

Where an individual engaged in the interstate sale and distribution of certain preparations designated as "Dr. Hayssen's Eureka Goitre Balsam," "Dr. Hayssen's Eureka Goitre Ointment," and "Hayssen's Supreme Rheumatism Tablets"—

- (a) Falsely represented in advertisements of said "Balsam" and said "Ointment," directly and by implication, that his said preparations constituted cures or competent treatments for tonsillitis, rheumatism, tumors, wens, and cysts, and were safe and harmless for use;

The facts being that little if any of the active ingredient of said ointment, which consisted essentially of a petrolatum base containing 10 percent iodide of potassium, was absorbed by the skin; and said "Balsam," which contained 10 percent iodide of potassium, was not safe and harmless for use under prescribed or usual conditions, in that the potassium iodide content was sufficient to cause serious injury to health: its use might unduly activate a goitre, with harmful results, and might convert a nontoxic goitre into a toxic goitre; and, if taken by a person having arrested tuberculosis, it might dissolve the fibrous tissues about the healed lesions and, in cases of active tuberculosis, might prevent or retard the healing process; and

- (b) Failed to reveal in said advertisements facts material with respect to the aforesaid consequences which might result from prescribed or customary use of the preparation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false and misleading advertisements were true, and as a result to induce members of such public to purchase substantial quantities of his said preparations:

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. Arthur F. Thomas*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. William C. Taylor, of Mobile, Ala., 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 Charles W. Hayssen, an individual trading as H. H. Hayssen Company, hereinafter referred to as respondent, has violated the provisions of said act, and

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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. The respondent, Charles W. Hayssen, is an individual trading as H. H. Hayssen Company, with his office and principal place of business located at 106 Margaret St., Mobile, Ala.

PAR. 2. The respondent is now, and for more than two years last past has been engaged in the sale and distribution of certain preparations containing drugs described by him as "Dr. Hayssen's Eureka Goitre Balsam," "Dr. Hayssen's Eureka Goitre Ointment," and "Hayssen's Supreme Rheumatism Tablets," and recommended by him for use in the treatment of various ailments and conditions of the human body.

Respondent causes his said preparations, when sold by him, to be transported from his aforesaid place of business in the State of Alabama 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 among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said products 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 his said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said products 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, by advertisements in newspapers and periodicals and by pamphlets, circulars and other advertising literature, are the following:

	(Enlarged)		
GOITRE	(Thyroid)	and	TONSILITIS
	(Glands)		(Rheumatism)

STAINLESS By operations only localized swellings are removed and are
 PAINLESS very likely to return because the roots, germs and
 HARMLESS poisons remain in the system. Now it is considered those
 having Goitre or Tonsillitis have them by their own choice,

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through indifference or neglect because they can be scientifically absorbed by using Dr. Hayssen's World Famous Goitre Preparations. "Eureka" Ointment and Balsam for simple Goitre (enlarged thyroid glands). Exophthalmia, Inward Goitre, Tonsillitis, Tumors, Wens, Cysts, Etc. These preparations are Safe, Dependable, and do not destroy natural tissues.

DR. HAYSSEN'S SUPREME RHEUMATISM TABLETS
GUARANTEED

To give satisfaction for Rheumatic, Diabetic and Syphilitic conditions, Obesity, Goitre, enlarged Glands, Tumors, Wens, Cysts, Tonsillitis, Exophthalmia, Gall bladder, Sinus, Heart Trouble, and Nerve Sedative. Is a wonderful Iodizer, Alkalinizer, Blood Builder and Purifier.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import, not specifically set out herein, the respondent represents and has represented directly or by implication that his preparations designated "Dr. Hayssen's Eureka Goitre Balsam" and "Dr. Hayssen's Eureka Goitre Ointment" constitute cures or remedies and competent and effective treatments for tonsillitis, rheumatism, tumors, wens and cysts. Respondent also represents in the manner aforesaid that his preparation designated "Hayssen's Supreme Rheumatism Tablets" constitutes a cure or remedy and a competent and effective treatment for rheumatism, diabetes, syphilis, obesity, tumors, wens, cysts, tonsillitis, gallbladder, sinus, heart trouble, and nervousness; that said preparation serves to alkalinize the system and builds and purifies the blood. Respondent further represents that all of his said preparations are safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparations "Dr. Hayssen's Eureka Goitre Balsam" and "Dr. Hayssen's Eureka Goitre Ointment," whether used together or separately, do not constitute cures or remedies for tonsillitis, rheumatism, tumors, wens or cysts, nor do said preparations possess any therapeutic value in the treatment of such conditions. Said preparation designated "Hayssen's Supreme Rheumatism Tablets" does not constitute a cure or remedy for, nor does it possess any therapeutic value in the treatment of, rheumatism, diabetes, syphilis, obesity, tumors, wens, cysts, tonsillitis, gallbladder, sinus, heart trouble, or nervousness. It does not serve to alkalinize the system nor does it build or purify the blood.

None of respondent's said preparations are in all cases safe for use, as they contain the drug potassium iodide in a quantity sufficient to cause in some instances serious injury to health if said preparations are used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations as aforesaid may be harmful to those having any form of goitre other than simple, colloid goitre and to those having tuberculosis in either the active or arrested stage. The hazard in cases of goitre is the tendency of potassium iodide to convert a simple adenoma to a toxic adenoma. In cases of arrested tuberculosis the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis the tendency of potassium iodide is to prevent or retard the healing process.

PAR. 6. Further, the advertisements disseminated by respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparations by persons having any form of goitre other than simple, colloid goitre or having tuberculosis in either the active or arrested stage may result in serious injury to health.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements disseminated as aforesaid has the tendency and capacity 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 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 December 5, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Charles W. Hayssen, charging him 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 respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, reports of the trial examiner, and brief in support of the complaint (respondent

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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. The respondent, Charles W. Hayssen, is an individual trading as H. H. Hayssen Company, with his office and principal place of business located at 103 LeBron Avenue, Montgomery, Ala. He is now, and for a number of years last past has been, engaged in the sale and distribution of certain preparations designated as "Dr. Hayssen's Eureka Goitre Balsam," "Dr. Hayssen's Eureka Goitre Ointment," and "Hayssen's Supreme Rheumatism Tablets."

PAR. 2. Respondent causes his said preparations, when sold by him, to be transported from his place of business in the State of Alabama to purchasers thereof at their points of location in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning his said products 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 has disseminated, and has caused the dissemination of, false advertisements concerning his said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the false, misleading, and deceptive statements and representations contained in the false advertisements disseminated and caused to be disseminated as hereinabove set forth, by means of the United States mails, by advertisements in newspapers, and by pamphlets, circulars, and other advertising literature, are the following:

	(Enlarged)		
GOITRE	(Thyroid)	and	TONSILITIS
	(Glands)		(Rheumatism)

Successfully Treated by Removing the Cause

STAINLESS By operations only localized swellings are removed and are
PAINLESS very likely to return because the roots, germs and
HARMLESS poisons remain in the system. Now it is considered those
 having Goitre or Tonsillitis have them by their own choice,
 through indifference or neglect, because they can be scientifi-
 cally absorbed by using Dr. Hayssen's World Famous Goitre
 Preparations. "Eureka" Ointment and Balsam for simple Goitre
 (enlarged thyroid glands). Exophthalmia, Inward Goitre, Ton-
 silitis, Tumors, Wens, Cysts, Etc. These preparations are Safe,
 Dependable, and do not destroy natural tissues.

* * *

Respondent has also made various false claims concerning his product "Dr. Hayssen's Supreme Rheumatism Tablets," but the actual dissemination of false advertisements concerning this product is not shown by the record.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import not specifically set out herein, respondent represents, and has represented, directly and by implication, that his preparations designated "Dr. Hayssen's Eureka Goitre Balsam" and "Dr. Hayssen's Eureka Goitre Ointment" constitute cures or remedies and competent and effective treatments for tonsillitis, rheumatism, tumors, wens, and cysts, and further represents that said preparations are safe and harmless for use. These representations are grossly exaggerated, false, and misleading, and constitute false advertisements in that the preparations "Dr. Hayssen's Eureka Goitre Balsam" and "Dr. Hayssen's Eureka Goitre Ointment," whether used separately or together, do not constitute a cure or remedy or a competent or effective treatment for tonsillitis, rheumatism, tumors, wens, or cysts. Respondent's "Eureka Goitre Ointment" consists essentially of a petrolatum base containing 10 percent iodide of potassium, and the directions call for the external application of a small quantity on the part to be treated. Little, if any, of the active ingredient is absorbed by the skin. Respondent's "Eureka Goitre Balsam" consists of 10 percent iodide of potassium, 10 percent alcohol, 5 percent ammonium iron citrate, and 1 percent balsam Peru, with 74 percent sweetened water, and the directions for use in the case of adults provide for taking one teaspoonful daily until improvement is noted, and for the use of lesser quantities by children. The amount of potassium iodide in respondent's "Eureka Goitre Balsam" is sufficient to cause, in some instances, serious injury to the health of the user. Its use may unduly activate a goitre, with harmful results to the system, and it may result in converting a non-toxic goitre into a toxic goitre. It taken by a person having arrested tuberculosis, this preparation may dissolve the fibrous tissues about the healed lesions and, in cases of active tuberculosis,

may prevent or retard the healing process. This preparation is not safe and harmless for use under the conditions prescribed in respondent's advertisements or under such conditions as are customary or usual.

PAR. 6. The aforesaid advertisements of the preparation "Dr. Hayssen's Eureka Goitre Balsam," disseminated by respondent as heretofore found, also constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein or material with respect to the consequences which may result from the use of the preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual, in that said advertisements fail to reveal that the use of this preparation by persons having certain goitres may result in distressing symptoms of toxic goitre and its use by persons having tuberculosis in an active or arrested stage may result in serious injury to health.

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

CONCLUSION

The aforesaid acts and practices of respondent 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 respondent, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, reports of the trial examiner, and brief in support of the complaint (respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles W. Hayssen, trading as H. H. Hayssen Company or under any other name, his repre-

sentatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the products designated "Dr. Hayssen's Eureka Goitre Balsam" and "Dr. Hayssen's Eureka Goitre Ointment," or any products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, 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 respondent's said preparations, whether used separately or in conjunction with one another, constitute a cure or remedy or a competent or effective treatment for tonsilitis, rheumatism, tumors, wens, or cysts.

(b) That respondent's preparation "Dr. Hayssen's Eureka Goitre Balsam" is safe and harmless.

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 of respondent's said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which, in the case of the preparation "Dr. Hayssen's Eureka Goitre Balsam," fails to reveal that the use of said preparation by persons having certain goitres may result in distressing symptoms of toxic goitre and that its use by persons having tuberculosis in an active or arrested stage may result in serious injury to health; *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 warnings to the above effect.

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.

IN THE MATTER OF

DIP NET SMELT FISHERMEN'S ASSOCIATION ET AL.

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

Docket 5055. Complaint, Sept. 29, 1943—Decision, Oct. 8, 1945

Where an association of some seventy fishermen engaged in fishing for smelt in the waters of the Cowlitz River near the City of Kelso in the State of Washington—organized in 1940 for the purpose, among others, of obtaining higher prices for smelt fish—the members of which caught from two-thirds to three-fourths of the total smelt production of that area, and were generally better equipped than the “independents,” and through possession of power boats were in a position to fish in mid-stream for the supposedly better quality fish; together with three member individuals who constituted a committee in charge of its activities, and the individual members generally; engaged in interstate sale and distribution of such fish through three wholesalers, in substantial competition with one another and with others until such competition was restrained as below set forth—

Entered into and put into operation a combination and conspiracy to restrain and suppress competition in the production of smelt fish in the aforesaid area, and in the sale and distribution of such fish in commerce; and

Where said individuals, acting in concert in furtherance of such undertaking, and through their said association and its manager and former collector and later through its managing committee—with whom dealers placed their orders, instead of dealing direct with fishermen, as before, and who for a time allocated the proportion of the total to each—and

- (a) Ceased to work individually or in groups for certain dealers, but all worked together, adhered to the allotments made to each member, made no sales except through the association, and made deliveries of the fish thus sold to the respective purchasers, for which, after checking, settlement was collected from the dealers by said manager who made payment to each member for the quantity caught by him; and
- (b) Cooperatively fixed, at meetings from time to time, the price at which smelt fish were sold, with the knowledge of aforesaid wholesalers, who agreed to and did purchase fish regularly from the members at the prices so fixed, and through whom alone during the 1942 season outside dealers were able to make purchases; and

Where said association, in pursuance of aforesaid undertaking and following the close of the 1942 season and the taking over of said manager's duties by aforesaid managing committee—

- (c) Obtained, in 1943, a license as a wholesaler and proceeded to lease all of the dock facilities in that area for the exclusive use of itself and its members, including the docks, hoisting equipment, and warehouses owned by the said three wholesalers, paying to each wholesaler as a consideration for the lease a specified amount on each 50-pound box of smelt handled over the three docks, and itself bearing the expense of the dock's operation;

Whereby independent fishermen were seriously handicapped in the marketing of their fish, were deprived of access to the docks and had to sell their