

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS JULY 1, 1946, TO JUNE 30, 1947

IN THE MATTER OF

OXFORD PRODUCTS, INC. TRADING AS VITAMIN GUILD OF AMERICA

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

Docket 5388. Complaint, Oct. 10, 1945—Decision, July 3, 1946

Where a corporation engaged under the trade name "Vitamin Guild of America" in the interstate sale and distribution of a vitamin product designated "Pantothenate Vitamin Tablets" and "Cal-Pan"—

- (a) Falsely represented through statements in advertisements in newspapers and periodicals, and in circulars, leaflets and other advertising material, that the calcium pantothenate contained in its said product was the gray hair and anti-gray hair vitamin and that its use would restore the original natural color to gray hair; that gray hair is due to a vitamin deficiency; and that the use of said product resulted in healthy natural hair, prevented gray hair, strengthened the nails and helped the skin resist freckling; and
- (b) Falsely represented through use of the words "Vitamin Guild of America" as a trade name, that its business was an association of persons or corporations formed for furthering some common interest and operated without profit; whereas, in truth, it was a business organization;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby to induce it to purchase its 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Allison S. Lowe, of Cleveland, Ohio, 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 Oxford Products,

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Inc., a corporation, trading as Vitamin Guild of America, 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, Oxford Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2300 Payne Avenue, Cleveland, Ohio. Said corporation has engaged in the acts and practices hereinafter set forth under the name of Vitamin Guild of America.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a vitamin product designated Calcium Pantothenate Vitamin Tablets and Cal-Pan.

The respondent causes said product, when sold, to be transported from the State of Ohio 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 product 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by the United States mails and various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning said product by various means for the purpose of introducing, and which is 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 misrepresentations contained in said false advertisements disseminated and caused to be disseminated, as herein set forth, by the United States mails by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

NEW GRAY HAIR VITAMIN CALCIUM PANTOTHENATE

ANTI-GRAY HAIR VITAMIN calcium Pantothenate

Now You Can Restore Color To GRAY HAIR WITH VITAMINS

IT IS NOW AVAILABLE TO YOU so that you can restore natural color to your hair.

CALCIUM PANTOTHENATE VITAMIN TABLETS.

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NEW VITAMIN DISCOVERY! CALCIUM PANTOTHENATE HAIR COLOR RESTORER

This wonderful new scientific discovery for restoring gray hair to its original color!

This "anti-gray-hair vitamin" (calcium pantothenate) showed positive evidence of a return of natural hair color.

Since November 1, 1940, Good Housekeeping Bureau has conducted experiments in restoration of hair color to gray hair, first on rats and then on human beings to determine the results of the so-called Anti-Gray hair Vitamin Pantothenate Acid or its derivatives. After 7 months of laboratory tests with 25 men and women whose ages ranged from 25 to 60, positive results of hair color restoration were obtained in 88% of the cases. Age did not appear to affect results. A man of 50 was one of the first to get results and a girl of 23 was one of the last.

Science has proved beyond a doubt that gray hair can be prevented in at least 80 cases out of 100.

These experiments indicate that natural sources of this vitamin are not sufficient to maintain or restore the color of hair at all ages.

Hence the results obtained in restoring Hair Color when an extra and generous amount is administered daily to supplement the natural intake. HAVE GOOD HEALTHY NATURAL HAIR, USE CALCIUM PANTOTHENATE "THE MIRACLE OF THE AGES!"

For good, healthy, natural-color hair you owe it to yourself to try "Calpan" calcium pantothenate.

Cal-Pan not only helps prevent gray hair, but strengthens the nails and helps your skin resist freckling.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that the calcium pantothenate contained in its said product is the gray hair and antigray-hair vitamin and its use will restore the original natural color to gray hair; that gray hair is due to a vitamin deficiency; that the use of said product results in healthy, natural hair; prevents gray hair, strengthens the nails, and helps the skin resist freckling.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's product will not restore the original color or any color resembling the original color, to gray hair. Said product cannot be properly or truthfully represented as a gray hair vitamin or an antigray vitamin. Gray hair is not known to be due to a vitamin deficiency. The use of respondent's product will not result in healthy, natural hair, prevent gray hair, strengthen the nails, or keep the skin from freckling.

PAR. 6. The use by the respondent of the words "Vitamin Guild of America" as a trade name, in connection with the offering for sale and sale of its said product in commerce, is misleading and deceptive. Such representation imports and implies that respondent's business is an association of persons or corporations with kindred pursuits of

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common interest formed for furthering some common interest and operated without profit, whereas in truth and in fact, respondent is not operating a guild or association operated without profit for mutual aid and benefit of its members in carrying out a common purpose, but is engaged in nothing other than a commercial business, maintained, existing, and operated for profit.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has had and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and implications are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said product.

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 10, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Oxford Products, Inc., a corporation, trading as Vitamin Guild of America, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of its answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation of facts was entered into between the attorney for the Commission and the attorney for respondent and read into the record. This stipulation provided that, subject to the approval of the Commission, the facts therein set forth should be taken as the facts in this proceeding and in lieu of testimony in support of or in opposition to the allegations of the complaint, and that the Commission might proceed upon such statement of facts to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing by the trial examiner of a report upon the evidence. Thereafter, the proceeding regularly came on for final consideration by the Commission and on the complaint, answer, and stipulation, the stipulation having been accepted and approved by the Commission; and the Commission, having duly considered the matter

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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, Oxford Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1814 East Fortieth Street, Cleveland, Ohio. Said corporation has engaged in the acts and practices hereinafter set forth under the name of Vitamin Guild of America.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a vitamin product designated Calcium Pantothenate Vitamin Tablets and Cal-Pan.

Respondent causes said product, when sold, to be transported from the State of Ohio 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 product 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 its aforesaid business respondent has disseminated and has caused the dissemination of advertisements concerning said product by the United States mails and various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent has also disseminated and has caused the dissemination of 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 statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by insertion in newspapers and periodicals, and by means of circulars, leaflets and other advertising material, are the following:

NEW GRAY HAIR VITAMIN CALCIUM PANTOTHENATE

ANTI-GRAY HAIR VITAMIN calcium Pantothenate

Now You Can Restore Color to GRAY HAIR WITH VITAMINS

IT IS NOW AVAILABLE TO YOU so that you can restore natural color to your hair. CALCIUM PANTOTHENATE VITAMIN TABLETS.

NEW VITAMIN DISCOVERY! CALCIUM PANTOTHENATE HAIR COLOR RESTORER

This wonderful new scientific discovery for restoring gray hair to its original color!

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This "anti-gray-hair vitamin" (calcium pantothenate) showed positive evidence of a return of natural hair color.

Since November 1, 1940, Good Housekeeping Bureau has conducted experiments in restoration of hair color to gray hair, first on rats and then on human beings to determine the results of the so-called Anti-Gray hair Vitamin Pantothenate Acid or its derivatives. After 7 months of laboratory tests with 25 men and women whose ages ranged from 25 to 60, positive results of hair color restoration were obtained in 88% of the cases. Age did not appear to affect results. A man of 50 was one of the first to get results and a girl of 23 was one of the last.

Science has proved beyond a doubt that gray hair can be prevented in at least 80 cases out of 100.

These experiments indicate that natural sources of this vitamin are not sufficient to maintain or restore the color of hair at all ages.

Hence the results obtained in restoring Hair Color when an extra and generous amount is administered daily to supplement the natural intake. **HAVE GOOD HEALTHY, NATURAL HAIR, USE CALCIUM PANTOTHENATE "THE MIRACLE OF THE AGES!"**

For good, healthy, natural-color hair you owe it to yourself to try "Calpan" calcium pantothenate.

Cal-Pan not only helps prevent gray hair, but strengthens the nails and helps your skin resist freckling.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import, respondent has represented that the calcium pantothenate contained in its said product is the gray-hair and antigray-hair vitamin and its use will restore the original natural color to gray hair; that gray hair is due to a vitamin deficiency; that the use of said product results in healthy, natural hair; prevents gray hair, strengthens the nails and helps the skin resist freckling.

PAR. 5. The foregoing statements and representations are erroneous and misleading and constitute false advertisements. In truth and in fact, respondent's product will not restore the original color, or any color resembling the original color, to gray hair. Said product cannot be properly or truthfully represented as a gray-hair vitamin or an antigray-hair vitamin. Gray hair is not known to be due to a vitamin deficiency. The use of respondent's product will not result in healthy, natural hair, prevent gray hair, strengthen the nails, or keep the skin from freckling.

PAR. 6. The use by respondent of the words "Vitamin Guild of America" as a trade name, in connection with the offering for sale and sale of its said product in commerce, is misleading and deceptive. Such representation imports and implies that respondent's business is an association of persons or corporations with kindred pursuits of common interest formed for furthering some common interest and

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operated without profit, whereas, in truth and in fact, respondent is a business organization, organized and doing business for profit.

PAR. 7. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

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, the answer of the respondent, and a stipulation as to the facts entered into by and between counsel for the commission and counsel for the respondent upon the record, which provided, among other things, that without further evidence or other intervening procedure the Commission might issue and serve upon the respondent findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, that the respondent, Oxford Products, Inc., a corporation, trading as Vitamin Guild of America, or under any other name, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's medicinal preparation designated as Calcium Pantothenate Vitamin Tablets and as Cal-Pan, 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 any advertisement by means of the United States mails or by any means in commerce, as

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"commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

- (a) That said preparation is a gray hair or anti-gray-hair vitamin;
- (b) That said preparation will restore the original color to gray hair;
- (c) That gray hair is due to a vitamin deficiency;
- (d) That the use of said preparation will result in healthy, natural hair;
- (e) That the use of said preparation will prevent gray hair;
- (f) That said preparation strengthens the nails, or helps the skin resist freckling.

(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 respondent's preparation, which advertisement contains any representation prohibited in paragraph (1) hereof.

It is further ordered, that the respondent and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Guild" as a part of respondent's trade name, or otherwise representing, directly or by implication, that respondent is a guild or association, or that respondent's business is anything other than a commercial enterprise operated for profit.

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.

Syllabus

IN THE MATTER OF

NORMAN COLLINS AND ROY MONTGOMERY, TRADING
AS WASHINGTON BREEDERS ASSOCIATION

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

Docket 5196. Complaint, July 25, 1944—Decision, July 11, 1946

A United States record of performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan.

The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks, with respect to quality by describing them in terms uniformly accepted in all parts of the United States.

Certain official terminology, described by the National Poultry Improvement Plan, as "United States Record of Performance" or "Record of Performance" and the abbreviations thereof, "U. S. R. O. P." and "R. O. P.", has acquired definite meaning throughout the industry and trade and when used to describe specified fowls indicates that each thereof had an official performance or lineage record.

Where two partners, engaged in the interstate sale and distribution of chickens and baby chicks—

- (a) Falsely represented, directly or by implication, through statements in newspapers and trade journals, and in advertising folders, pamphlets, circular letters, and other advertising media, that they were United States Record of Performance breeders and operated poultry breeding plants or hatcheries under the supervision of an official State agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with official state agencies; and
- (b) Falsely represented, as aforesaid, that their testing tolerance for pullorum or bacillary white diarrhea disease was "exactly 10 times as stringent" as the requirements of the National Poultry Improvement Plan for testing for pullorum or bacillary white diarrhea disease;

The facts being that aforesaid plan, under the designation "Pullorum control", provided four classifications, the first two of which permitted maximum tolerances of less than 10 percent and 2 percent respectively, the third of which permitted no reactors at all on the last test, and the fourth of which permitted no reactors in either of two tests not less than 6 months apart, the later test being made within the testing year immediately preceding the date of sale of hatching eggs, chicks, or breeding stocks;