

Syllabus

IN THE MATTER OF

FRONTIER ASTHMA COMPANY, INC. 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 3935. Complaint, Apr. 3, 1941¹—Decision, Sept. 12, 1946

Where a corporation, three officers thereof who formulated its policies and directed its business practices, and five associated physicians, cooperatively engaged in the advertisement and interstate sale and distribution of medicinal preparations intended for use in the treatment of asthma, which were made up of substantially the same ingredients, in the "regular" strength, the "strong", and the "minus", in 4-gallon batches; through advertisements in newspapers, periodicals, circulars and other advertising material, directly or by implication—

(a) Represented falsely that their said preparations were a cure or remedy and a competent and effective treatment for asthma, and that they built up the system and prevented attacks of asthma;

The facts being that said preparations had no therapeutic value beyond affording a measure of temporary relief from the paroxysms of asthma through the tendency of the three iodide ingredients to liquify the mucus which is largely responsible for such outward manifestations;

(b) Represented that said preparations were safe and harmless and might be used without danger of ill effects upon health;

The facts being that, by virtue of the potassium iodide ingredient, they were likely to be harmful to those having goiter through the tendency of said ingredient to convert a benign adenoma into a toxic one; in cases of arrested tuberculosis potassium iodide tends to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process, and in active tuberculosis, tends to prevent or retard the healing process; and

(c) Failed to reveal facts material in the light of the aforesaid representations and with respect to consequences which might result from the use of said preparations under prescribed or usual conditions in that their advertisements contained no statement to the effect that said preparations should not be used by those having goiter or tuberculosis in either the active or arrested stage;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase 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 and deceptive acts and practices in commerce.

As respects contention that respondents were not engaged in interstate commerce under the circumstances concerned in a proceeding involving alleged misrepresentation of certain medicinal preparations and false advertisement thereof in newspapers, periodicals, circulars, etc., and the transportation thereof from respondents' place of business to purchasers in other states and in the District of Columbia; and in which it appeared that—

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- (1) Respondent corporation offered in newspaper and periodical advertisements directed to asthma sufferers, to send a free trial of its preparations and treatment, represented as effective therefor, and sent to those replying a circular letter enclosing a so-called history blank to be filled in with the requested information as to the individual's physical conditions, symptoms, etc., and to be returned to S, "Business Mgr.";
 - (2) Said S, respondent herein and one of said corporation's general officers, responsible for its policies and practices, referred said blank to one of five associated physicians, respondents herein, whose business address was that of the corporation, and whose business manager said S was;
 - (3) Said physician, if the blank disclosed no information making use of the preparations dangerous,
 - (a) Prepared a purported prescription—which as a rule called for one of the three strengths of the preparations, directions for taking which were uniform—and turned it over to respondent corporation, which prepared a 1-ounce bottle of the preparation in accordance with the prescription, and delivered it to respondent S as business manager for the said "Frontier Method Physicians", by whom it was forwarded to the individual as a free trial sample;
 - (b) At the same time sent a letter to the individual which stated that the case had been assigned to him for attention, that a trial treatment had been prepared and forwarded, recommended purchase of the regular course of treatment, and enclosed a printed slip showing the cost of the treatment, an order blank, and a postage-paid envelope addressed to said S; and
 - (c) If no order was received, sent several follow-up letters; and
 - (4) S assigned cases in rotation to said physicians, paying each a small fee for each case assigned;
 - (5) Sent those ordering the regular treatment a full-sized bottle for a month;
 - (6) Received the exclusive right under a formal agreement between said corporation and himself to purchase all medicinal preparations made by the company, which furnished him free, such office and other space as might be necessary in carrying on the sale of the preparations, carried on under its own name newspaper and magazine advertising thereof, and sent to him any remittances received by it from the public; and
 - (7) Retained said staff of physicians, supplied them with stenographers and other clerical help, furnished all stationery, postage and other supplies required, and, after deducting from the gross amount received from sale of the preparations the physicians' fees, salaries of stenographers and other costs above indicated, and the ratable proportion of his agreed salary, paid over the residue to the corporation—which was solely entitled to all lists of patients:
- The Commission rejected the corporation's contention that it sold its products to S only and that it was therefore not engaged in interstate commerce, and the contention of respondent physicians that they were engaged only in the practice of medicine, that they had nothing to do with the advertising and sale of the preparations and were not engaged in trade or commerce, and was of the opinion from the evidence, and therefore found, that the advertising and sale of the preparations to the public was a cooperative enter-

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prise on the part of all of the respondents, and that each of them acted in conjunction and cooperation with the others in carrying on the business.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. William L. Taggart for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT

Puruant 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 Frontier Asthma Co., Inc., a corporation, Guy A. White, individually and as president of Frontier Asthma Co., Inc., Edward O. Spillman, individually and as vice president and general manager of Frontier Asthma Co., Inc., Peter A. Porter, Jr., individually and as secretary and treasurer of Frontier Asthma Co., Inc., Ernest N. Post, Harry I. Partridge, William Stanton, B. F. Van Duzee, and C. P. Bonham, individuals, hereinafter referred to as respondents, have 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Frontier Asthma Co., Inc., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 462 Niagara Street, Buffalo, N. Y. At all times mentioned herein it has been engaged in the business of selling medicinal preparations for use in the treatment of asthma. Guy A. White, Edward O. Spillman, and Peter A. Porter, Jr., are the president, vice president, and general manager, and secretary and treasurer, respectively, of the Frontier Asthma Co., Inc., and have their office and principal place of business at 462 Niagara Street, Buffalo, N. Y. The said Edward O. Spillman distributes the products compounded by the said Frontier Asthma Co., Inc., in the manner hereinafter set forth.

The respondents, Ernest N. Post, Harry I. Partridge, William Stanton, B. F. Van Duzee and C. P. Bonham, are duly licensed physicians associated under the name and style of the Frontier Method Physicians with their office and place of business located at 462 Niagara Street, Buffalo, N. Y. Said individuals are the hired employees of the respondent, Edward O. Spillman, and are under his direction and control, he being designated as business manager of said group. Said individual respondent physicians have been engaged, at all times mentioned herein, in the purported diagnosis of asthma from case

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histories prepared by individuals and sent through the mails and prescribing treatment for the persons furnishing such histories. All individual respondents herein act in conjunction and cooperation with each other and with the corporate respondents in carrying on the acts and practices hereinafter alleged.

PAR. 2. Respondents as hereinabove described are now, and for more than 1 year last past have been, engaged in the sale and distribution of certain medicinal preparations, and cause said medicinal preparations, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said medicinal preparations sold and distributed by them between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of said business and in order to secure purchasers of said medicinal preparations, the individual respondents, acting in conjunction and cooperation with each other, cause the Frontier Asthma Co., the corporate respondent, to place certain advertisements in various publications offering a free trial sample of said preparations. When replies to such advertisements are received by the corporate respondent, the same are delivered to the individual respondent, Edward O. Spillman, vice president and general manager of corporate respondent. Thereupon the said Edward O. Spillman, over the signature of Frontier Asthma Co., writes the persons answering said advertisements recommending the Frontier Method treatment for asthma. Enclosed in such letters is a so-called history blank which the recipients are requested to complete and return in a postage-paid envelope addressed to E. O. Spillman, Business Manager. Upon the return of the history blanks completed as requested, the individual respondent, Edward O. Spillman, refers the same to the Frontier Method Physicians. A purported diagnosis is then made from the answers in the history blanks and so-called prescriptions are prepared. While such prescriptions are alleged to be prepared in accordance with an individual diagnosis, the general content of each prescription is practically the same and the therapeutic properties of the various drugs prescribed are substantially alike in all cases. Such purported prescriptions are then turned over to the Frontier Asthma Co., Inc., compounded by them, and the medical preparations delivered to Edward O. Spillman who forwards the same to the various individuals as free trial treatments. At the same time a letter is written, signed by a member of the Frontier Method Physicians

stating that he is in charge of the case, that trial treatment has been prepared and forwarded and recommending the purchase of the regular course of treatment. Enclosed in each letter is an order blank, printed slip showing the cost of the regular treatment and postage paid envelope addressed to E. O. Spillman, Business Manager.

PAR. 4. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by 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 their said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations 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, magazines and periodicals, and by circulars and other advertising literature, are the following:

FREE FOR ASTHMA

If you suffer with attacks of Asthma so terrible you choke and gasp for breath, if restful sleep is impossible because of the struggle to breathe, if you feel the disease is slowly wearing your life away, don't fail to send at once to the Frontier Asthma Co. for a free trial of a remarkable method. No matter where you live or whether you have any faith in any remedy under the sun, send for this free trial. If you have suffered a lifetime and tried everything you could learn of without relief; even if you are utterly discouraged, do not abandon hope but send today for this free trial. It will cost you nothing. Address

FRONTIER ASTHMA CO.
93-F Frontier Bldg.
462 Niagara Street
Buffalo, New York

You may not be suffering from asthma at present, but possibly it is only a matter of time when you will have an attack. Why not let us send treatment that is designed to overcome its symptoms?

Don't think you must wait until an attack comes on. Remember the cause remains and it is by treatment which overcomes the symptoms that the method gives relief. If your system is impregnated with the medicine the symptoms should all disappear.

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Perhaps you are waiting for an attack before taking the trial treatment. This, of course, would be a mistake for one of the objects of the treatment is to prevent an attack, and by taking the treatment even though free from acute manifestations, the system is better fortified to overcome all symptoms even under the most trying conditions.

Just fill out the enclosed envelope, seal and drop it in any mail box and in a few days you will receive postage paid, a trial treatment of this remarkable Method adapted to meet your individual requirements.

Harmlessness of Frontier Method—

I wish to say here, for the satisfaction of the skeptical that the treatment does not contain narcotics or habit-forming drugs, but only pure, harmless medicines, compounded and prepared to produce beneficial results.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondents' medicinal preparations, respondents, cooperatively have represented and do now represent, directly and by implication, that their preparations are a cure or remedy for asthma and a competent and effective treatment therefor; that the use of said preparations will prevent attacks of asthma and relieve the suffering incident thereto, and will build up the system and prevent recurrence of attacks; that correct diagnosis may be made through the use of history blanks furnished by persons and sent through the mails; that the preparations furnished by respondents in the treatment of asthma are safe and harmless and may be used without danger of ill effects upon the health of the user and may be safely taken and used by the public in their homes under directions supplied by respondents.

PAR. 6. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, respondents' medicinal preparations are not a cure or remedy for asthma and are not a competent or effective treatment therefor. The use of said preparations will not prevent attacks of asthma or build up the system and prevent recurrence of attacks. In fact, said preparations have no therapeutic value other than providing temporary relief from the paroxysms of asthma and bronchial irritations. It is not possible to make correct diagnosis through the use of history blanks. The preparations are not in all cases safe and harmless, as they contain the drug potassium iodide in a quantity sufficient to cause, in some instances, injury to health if said preparations are used under the conditions prescribed or under such conditions as are customary or usual. The preparations cannot be used and taken with

safety by the public in their homes under directions supplied by respondents.

The use of said preparations as aforesaid may be harmful to those having goiter or tuberculosis in either the active or arrested stage. In cases of goiter, the tendency of potassium iodide is to convert a benign 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, potassium iodide tends to prevent or retard the healing process.

PAR. 7. The advertisements disseminated by the respondents, as aforesaid, do not contain a statement to the effect that said preparation should not be used by persons having tuberculosis or goiter. Consequently, such advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 8. The use by respondents of the foregoing false advertisements, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and into the purchase of respondents' preparation.

PAR. 9. 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 April 3, 1941, issued and subsequently served upon the respondents named in the caption hereof its amended and supplemental complaint in this proceeding charging respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by the respondents of their answer to such complaint, evidence in support of and in opposition thereto was introduced before a trial examiner of the Commission theretofore duly designated by it, and such evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the

Commission on the amended and supplemental complaint, the answer thereto, the evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; 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 Frontier Asthma Co., Inc. (frequently referred to hereinafter as "the respondent corporation" and as "the company"), is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business located at 462 Niagara Street, Buffalo, N. Y.

Respondents Guy A. White, Edward O. Spillman, and Peter A. Porter, Jr., are, respectively, the president, vice president and general manager, and secretary and treasurer of the corporate respondent Frontier Asthma Co., Inc. Each of them has participated actively in formulating the policies and directing the business practices of the corporation.

Respondents Ernest N. Post, Harry I. Partridge, William Stanton, B. F. Van Duzee, and C. P. Bonham are licensed physicians associated under the name Frontier Method Physicians, with their office and place of business located at the same address as that of the corporate respondent, 462 Niagara Street, Buffalo, N. Y. These respondents are frequently referred to hereinafter as "respondent physicians" and as "the physicians." In addition to his office of vice president and general manager of respondent corporation Frontier Asthma Co., Inc., respondent Edward O. Spillman is also business manager for the respondent physicians.

PAR. 2. The respondents are cooperatively engaged in the advertising, sale, and distribution of certain medicinal preparations, intended for use in the treatment of asthma. The general plan or method employed is substantially as follows. The company inserts in various publications advertisements asserting the effectiveness of the preparations and offering to send a free trial sample to those answering the advertisement. The advertisements are usually in the following form:

FREE FOR ASTHMA

If you suffer with attacks of Asthma so terrible you choke and gasp for breath, if restful sleep is impossible because of the struggle to breathe, if you feel the

disease is slowly wearing your life away, don't fail to send at once to the Frontier Asthma Co. for a free trial of a remarkable method. No matter where you live or whether you have any faith in any remedy under the sun, send for this free trial. If you have suffered a lifetime and tried everything you could learn of without relief; even if you are utterly discouraged, do not abandon hope but send today for this free trial. It will cost you nothing. Address

FRONTIER ASTHMA CO.

93-F Frontier Bldg.

462 Niagara Street

Buffalo, New York

(Comm. Ex. 54-Z-29)

To those persons answering the advertisement the company sends a circular letter in which is enclosed a so-called history blank which the recipient is requested to complete and return in a postage-paid envelope addressed to "E. O. Spillman, Business Mgr." This history blank contains a number of questions relating to the individual's physical condition, his symptoms, and so forth. Upon the return of the completed history blank, respondent Spillman refers it to one of the respondent physicians. If the history blank does not disclose that the individual has some disease or condition which would, in the opinion of the physician, render the use of respondents' preparations dangerous, the physician prepares a purported prescription and turns it over to respondent corporation, which prepares a 1-ounce bottle of the preparation in accordance with the prescription, and delivers it to respondent Spillman as business manager for the Frontier Method Physicians. Spillman forwards the preparation to the individual as a free trial sample. At the same time, a letter is sent to the individual by the physician stating that the case has been assigned to him for attention, that a trial treatment has been prepared and forwarded, and recommending the purchase of the regular course of treatment. Enclosed in the letter is a printed slip showing the cost of the treatment, an order blank, and a postage-paid envelope addressed to respondent Spillman.

If the individual places an order for the regular treatment, a full-sized bottle of the preparation, which is supposed to last for 1 month, is sent to him. If no order is received, several follow-up letters are sent to him at intervals by the physician in an effort to induce a purchase. Those purchasing the preparations are supplied with report blanks and are requested to report their condition from time to time. The cases are assigned to the physicians in rotation and each physician receives from Spillman a small fee for each case assigned to him.

PAR. 3. Substantially the same ingredients are used by respondents in all of their preparations, the preparations differing only as to

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strength—as to the amount of the various ingredients used. Generally speaking, there are three preparations—the “regular” strength, the “strong” and the “minus.” The mixtures are each made up in 4-gallon batches. The formula for the “regular” mixture is—

	Ounces
Caffeine	6
Ammonium iodide.....	24
Sodium iodide.....	24
Potassium iodide.....	24
Compound tincture of lavender.....	24
Water sufficient to make 4 gallons.	
Caramel as coloring matter.	

In the “strong” mixture the caffeine is increased to 8 ounces, and each of the iodides and the tincture of lavender to 32 ounces. Otherwise, the formula is the same as for the regular strength. The “minus” is the same as the regular, except that caffeine is omitted. Insofar as the treatment of asthma is concerned, the active ingredients in the preparations are the three iodides. In making up their prescriptions the respondent physicians usually choose one of these three mixtures, although in exceptional cases the amount of the various ingredients in the mixture may be further altered. The recommended dosage in all cases is the same, the directions on all the bottles being, “Take $\frac{1}{2}$ teaspoonful in $\frac{1}{2}$ glass of water 3 times a day after meals and at bedtime.”

PAR. 4. There is no formal, written agreement governing the relationship between respondent Spillman and the respondent physicians. There is, however, such an agreement governing the relationship between Spillman and respondent Frontier Asthma Co., Inc. Under this agreement (Comm. Ex. 8), which was executed in May 1939, Spillman has the exclusive right to purchase all medicinal preparations manufactured by the company. The company furnishes to Spillman, free of charge, such office and other space as may be necessary in carrying on the business of selling the preparations, and it also carries on under its own name the newspaper and magazine advertising of the preparations. Any remittances sent to the company by members of the public to cover purchases of the preparations are turned over to Spillman. Spillman retains the staff of physicians and supplies them with stenographers and other clerical help. He also furnishes all stationery, postage, and other supplies required in the conduct of the work.

The company and Spillman are compensated in the following manner. From the gross amount received from the sale of the preparations to the public there are deducted (a) the fees of the physicians,

(b) the salaries of stenographers and other clerical help, (c) the cost of stationery, postage, and other supplies, and (d) \$7,500 per year (deducted at the rate of \$625 per month) as Spillman's compensation. After these deductions have been made, the net amount remaining is paid over to the company. Monthly and annual statements showing the results of the operation of the business are submitted to the company by Spillman, and the company has the right to examine Spillman's books of account and other records for the purpose of checking such statements.

The agreement further provides that "all lists of patients, actual or prospective, heretofore or hereafter accumulated, shall be the sole property of the party of the first part (the company)."

PAR. 5. The respondent corporation contends that it sells its products to respondent Spillman only and that it is therefore not engaged in interstate commerce. Respondent physicians insist that they are engaged only in the practice of medicine, that they have nothing to do with the advertising and sale of the preparations and are not engaged in trade or commerce. The Commission rejects these contentions. The Commission is of the opinion from the evidence and therefore finds that the advertising and sale of the preparations to the public is a cooperative enterprise on the part of all of the respondents, that each of the respondents acts in conjunction and cooperation with the others in carrying on the business.

PAR. 6. Respondents cause their preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their 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 respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in such advertisements (in addition to those set forth in paragraph 2 hereof, which appear in advertisements inserted in newspapers, magazines, and periodicals) are the following, which appear in form letters, circulars and other advertising material distributed among prospective purchasers:

You may not be suffering from asthma at present, but possibly it is only a matter of time when you will have an attack. Why not let us send treatment that is designed to overcome its symptoms? (Comm. Ex. 12-A.)

Don't think you must wait until an attack comes on. Remember the cause remains and it is by treatment which overcomes the symptoms that the method gives relief. If your system is impregnated with the medicine the symptoms should all disappear. (Comm. Ex. 18-A.)

Perhaps you are waiting for an attack before taking the trial treatment. This, of course, would be a mistake for one of the objects of the treatment is to prevent an attack, and by taking the treatment even though free from acute manifestations, the system is better fortified to overcome all symptoms even under the most trying conditions. (Comm. Ex. 19-A.)

Just fill out the enclosed history blank of your case, answer all the questions, put it in the enclosed envelope, seal and drop it in any mail box and in a few days you will receive postage paid, a trial treatment of this remarkable Method adapted to meet your individual requirements. (Comm. Ex. 9-A.)

Harmlessness of Frontier Method.—I wish to say here, for the satisfaction of the skeptical that the treatment does not contain narcotics or habit-forming drugs, but only pure, harmless medicines, compounded and prepared to produce beneficial results. (Comm. Ex. 6-G.)

PAR. 8. Through the use of these statements, including those set forth in paragraph 2 hereof, and others of similar import, respondents represent, directly or by implication, that their preparations are a cure or remedy and a competent and effective treatment for asthma; that the preparations build up the system and prevent attacks of asthma; and that the preparations are safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 9. The principal outward manifestations of asthma are coughing, wheezing, and difficulty in breathing, particularly in exhaling. These symptoms are due in large part to the presence in the small bronchi of tenacious plugs or strings of mucus. The iodide ingredients in respondents' preparations (potassium iodide, ammonium iodide and sodium iodide) tend to liquefy this mucus, thus enabling the patient to cough it up and expectorate it with less difficulty. A measure of temporary relief from the paroxysms of asthma is thus afforded. This is the only therapeutic value of the preparations. They do not constitute cures or remedies for asthma. Nor are they competent or effective treatments for the condition except insofar as they may afford temporary symptomatic relief, as set forth above. The preparations are in-

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capable of building up the system or preventing attacks of asthma.

Nor are the preparations in all cases safe or harmless. Because of the potassium iodide ingredient, the preparations are likely to be harmful to those having goiter or tuberculosis in either the active or arrested stage. In cases of goiter the tendency of potassium iodide is to convert a benign adenoma into 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 potassium iodide tends to prevent or retard the healing process.

PAR. 10. The Commission therefore finds that the representations made by respondents with respect to their preparations, as set forth in paragraphs 2, 7, and 8 hereof, are erroneous and misleading and constitute false advertisements.

Respondents' advertisements contain no statement to the effect that the preparations should not be used by those having goiter or tuberculosis in either the active or arrested stage. The Commission therefore finds that the advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations made therein and material with respect to consequences which may result from the use of the preparations under the conditions prescribed in the advertisements or under such conditions as are customary or usual.

PAR. 11. The use by respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations possess therapeutic values which they do not in fact possess, and that the preparations are in all cases safe for use, when such is not the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparations as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents 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 amended and supplemental complaint of the Com-

mission, the answer of respondents, evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, that respondent Frontier Asthma Co. Inc., a corporation, and its officers, and respondents Guy A. White, Edward O. Spillman, and Peter A. Porter, Jr., individually and as officers of said corporation, and respondents Ernest N. Post, Harry I. Partridge, William Stanton, B. F. Van Duzee, and C. P. Bonham, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the medicinal preparations now sold by respondents for use in the treatment of asthma, or any preparations of substantially similar composition or possessing substantially similar properties, 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 respondents' preparations constitute cures or remedies for asthma; or that said preparations possess any therapeutic value in the treatment of asthma except insofar as they may afford temporary relief from the paroxysms thereof;

(b) That said preparations build up the system or prevent attacks of asthma;

(c) That said preparations are safe or harmless, unless such representation expressly excludes from its application those individuals having goiter or tuberculosis in either the active or arrested stage.

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 preparations should not be used by those having goiter or tuberculosis in either the active or arrested stage; 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 any advertisement by any means for the purpose of inducing or which is likely to induce,

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directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, 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 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.

Commissioner Mason not participating.

IN THE MATTER OF

LANGENDORF UNITED BAKERIES, INC., AND OLD HOME-
STEAD BAKERY, INC.

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

Docket 5250. Complaint, Nov. 21, 1944—Decision, Sept. 13, 1946

Where a corporation, which owned and operated a number of bakeries in California and Washington, and was engaged in the manufacture and interstate sale and distribution of bread under various trade names, including its "Holsum," "Langendorf," "Wealth-O-Wheat," "American Meal," "Dr. Penland's Vitamin B₁," and "Hollywood" products; through advertisements in radio continuities, newspapers, trade periodicals, and other advertising literature—

- (a) Falsely represented, with respect to its "Holsum" bread, that it had been appointed as the official baker of bread for the Dionne quintuplets, that its said product was a part of their daily fare, and was the most nourishing white bread on the market;
- (b) Represented falsely that its "Langendorf Bread" contained ingredients that produced more energy than other breads, contained more than five times the amount of vitamin B₁ and 50 percent more minerals than were found in ordinary unenriched white bread, and had been adjudged the finest bread in America by qualified experts;

The facts being that practically all white breads on the American market are enriched with vitamin B₁ and minerals; its said bread did not have significantly greater amounts thereof than most competitive breads and furnished no more energy than many; and no tests justifying last claim had been made by qualified experts;

- (c) Represented falsely that its "Wealth-O-Wheat Bread" was more digestible, more nourishing, and lower in calories than either ordinary white or wheat bread; that it contained eight times the amount of vitamin B₁ found in ordinary white bread; that the vitamin B₁ would build healthy nerves and increase vitality; that no other bread was equal thereto; and that it was made from flour milled by a new process not available to competitive bakers;
- (d) Represented falsely that its product designated as "American Meal Bread" was a new and different reducing-diet bread; that it was low in caloric value, but contained ingredients that would keep up ones vitality and keep one fit while reducing;
- (e) Represented falsely that the intake of 200 to 300 units of vitamin B₁ daily is sufficient to maintain good health; that the consumption of two or three slices of "Dr. Penland's Vitamin B₁ Wheat Bread" at each meal would provide the daily requirement of said vitamin, and that the daily consumption of said bread insured healthy nerves, bodily fitness and vitality; and
- (f) Represented falsely that its "Hollywood Bread" was extremely low in caloric value, and that the eating of said product would cause a substantial loss of weight, without exercise or medicine and without a feeling of hunger;