

Complaint

IN THE MATTER OF

GATTIS CHEMICAL COMPANY

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

Docket 5014. Complaint, July 20, 1943—Decision, Oct. 3, 1946

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated "Gattis K and B Pills"; through radio continuities, leaflets, pamphlets and other advertising, directly and by implication—

- (a) Falsely represented that its said preparation was a cure or remedy, and constituted an effective treatment, for kidney disorders and diseases; and
- (b) Failed to reveal facts material in the light of the aforesaid representations and that the use of said preparation under prescribed or usual conditions might result in injury to health, in that the podophyllin contained therein was an irritant laxative, might result in rupture of the appendix, if taken by a person having appendicitis, and was therefore potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting or other symptoms of said condition;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and that its preparation might be taken without ill effects, and thereby to induce purchase thereof:

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. John W. Addison*, trial examiner.

Mr. S. F. Rose for the Commission.

Hildrop & Mayfield, of Nashville, Tenn., 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 Gattis Chemical Co., has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gattis Chemical Co. is a corporation organized and existing under and by virtue of the laws of the State of

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Tennessee, with its office and place of business located at 214-216 Woodland Street, Nashville, Tenn.

PAR. 2. The respondent is now and for several years last past has been engaged in the business of offering for sale, sale and distribution of a medicinal preparation designated "Gattis' K and B Pills," recommended for use in the treatment of kidney ailments and diseases. Respondent causes said medicinal preparation, when sold, to be transported from its aforesaid place of business in the State of Tennessee to purchasers thereof located in various States of the United States other than the State of Tennessee and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its medicinal preparation in commerce among and between the various States of the United States.

PAR. 3. In the furtherance of the sale and distribution of its medicinal preparation, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning said medicinal preparation 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 the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as above set forth by the United States mails, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature are the following:

A large majority of people over 45 years of age suffer from kidney disorders. Since 1907 Gattis' K and B Pills have benefited thousands of such people.

Are you suffering from Kidney trouble? Try Gattis K & B Pills. * * *
It has benefited thousands of sufferers.

An ounce of prevention is worth a pound of cure. Backache without apparent cause, frequent interruptions of sleep are symptoms that may well be looked on as a warning or red light signal. Thousands of people suffer from kidney trouble! If you are one of these, start using Gattis' K and B Pills. Almost every day's mail brings testimonials from users, telling how Gattis' K and B Pills have benefited them.

Well for just that little you may solve a health problem that will mean everything to you.

My condition gradually grew worse until I had my water drawn by a doctor. * * * I took 5 bottles of pills and am completely cured.

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Hale and hearty at 62 thanks to Gattis' K and B Pills.

* * * and one of my family gave the whole bottle to a lady that was almost dying with the disease. Now she is well * * *.

PAR. 4. Through the use of statements and representations hereinabove set forth, and other statements and representations similar thereto, not set forth herein, all of which purport to be descriptive of the therapeutic value of respondent's preparation, respondent represents, directly and by implication, that said preparation is a cure or remedy for, and constitutes a competent and effective preventive and treatment of kidney disorders and diseases.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's said preparation designated as aforesaid, is not a cure or remedy for, nor does it constitute a competent and effective preventive or treatment of kidney disorders or diseases.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further 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 preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

In truth and in fact, respondent's preparation contains extract of buchu and rectified turpentine and is an irritant diuretic. Its indiscriminate use, by persons whose kidneys are injured or diseased, might seriously interfere with their proper functioning, and prolonged use or excessive doses may injure kidneys which are normal. Furthermore, said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false and misleading statements and representations, and others of similar nature, 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, representations, and advertisements are true, and that said preparation may be taken without ill effects, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's pills.

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 July 20, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Gattis Chemical Co., a corporation, charging it 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 and amended answer thereto, testimony and other evidence were taken before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were 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, answer and amended answer, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel; 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, Gattis Chemical Co., is a corporation organized and existing under the laws of the State of Tennessee, with its office and principal place of business at 214-216 Woodland Street, Nashville, Tenn.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the offering for sale, sale, and distribution of a medicinal preparation designated "Gattis K & B Pills." Respondent causes said preparation, when sold, to be transported from its place of business to purchasers at their respective points of location in various other States of the United States, and maintains, and has maintained, a course of trade in said preparation in commerce among and between various States of the United States.

PAR. 3. In furtherance of the sale and distribution of its aforesaid medicinal preparation, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation 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 its said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements contained in said false advertisements disseminated and caused to be disseminated as aforesaid, by the United States mails, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Are you suffering from Kidney trouble? Try Gattis K & B Pills. This preparation was originated by a graduate pharmacist of national reputation and has been used with satisfactory results since 1907. It has benefitted thousands of sufferers * * * (Comm. Ex. 2).

* * * Thousands of people suffer from kidney trouble! If you are one of these, start using Gattis K & B Pills. Almost every day's mail brings testimonials from users, telling how Gattis K & B Pills have benefitted them. Satisfactory results since 1907! That's the story of Gattis K & B Pills * * * (Comm. Ex. 3).

* * * A large majority of people over 45 years of age suffer from kidney disorders. Since 1907 Gattis K & B Pills have benefitted thousands of such people * * * (Comm. Ex. 5).

* * * If you're bothered with kidney trouble, give Gattis K & B Pills a trial * * * (Comm. Ex. 6).

PAR. 4. By the use of the statements and representations set out above, and other statements and representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic value of respondent's preparation, respondent represents, directly and by implication, that its said preparation is a cure or remedy for, and constitutes a competent and effective treatment of, kidney disorders and diseases.

PAR. 5. For some time preceding the issuance of the complaint in this proceeding the formula for Gattis K & B Pills was as follows: Each pill contained extract digitalis, $\frac{1}{20}$ grain; extract asparagus seed, $\frac{1}{5}$ grain; extract buchu, $\frac{1}{2}$ grain; extract saw palmetto, $\frac{1}{3}$ grain; podophyllin, $\frac{1}{12}$ grain; potassium nitrate, 1 grain; extract hydragrea, $\frac{1}{4}$ grain; methylene blue, $\frac{1}{5}$ grain; rectified oil of turpentine, 1.215 minims. After the inception of this proceeding the extract of digitalis and rectified oil of turpentine were omitted from the formula. Before and after this change, the directions for use recommended the taking of four of the aforesaid pills per day. Respondent's said preparation does not now, and did not before the

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aforesaid change in formula, constitute a cure or remedy for, or a competent or effective treatment of, any kidney disorder or disease.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further 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 preparation under the conditions prescribed for use in said advertisements, or under such conditions as are customary and usual, may result in injury to health. The podophyllin contained in respondent's preparation is an irritant laxative, and if taken by a person having appendicitis may result in rupture of the appendix. The preparation is, therefore, potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The complaint herein also charges that respondent's advertisements are false for the reason that they fail to reveal that the use of its said preparation containing extract of buchu and rectified oil of turpentine by persons whose kidneys are injured or diseased may seriously interfere with the functioning of such kidneys and that prolonged or excessive doses may injure normal kidneys. The testimony indicates that extract of buchu and oil of turpentine, when taken in sufficient quantities, may result in injury to health. It is not entirely clear from the testimony whether the quantity of oil of turpentine formerly contained in respondent's preparation was or was not sufficient to cause such injury, and in view of the fact that the respondent discontinued the use of oil of turpentine in its preparation some 3 years ago, no finding is made by the Commission on this point. In the absence of the oil of turpentine, the amount of extract of buchu now used in said preparation, when considered with the dosage presently recommended, is not sufficient to cause injury to the health of the user.

PAR. 8. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations in the advertisements are true and that respondent's preparation may be taken without ill effects and, because of such mistaken and erroneous belief, to induce a substantial portion of the purchasing public to purchase respondent's Gattis K & B Pills.

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, answer and amended answer of respondent, testimony and other evidence taken before the examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs filed herein, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, that respondent, Gattis Chemical Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Gattis K & B Pills, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, 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, that said product is a cure or remedy for, or a competent and effective treatment of, any kidney disorder or disease.

2. Disseminating or causing to be disseminated, 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 Gattis K & B Pills, any advertisement which contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that said product should not be used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis; *Provided, however*, that such advertisement need contain only the statement, "CAUTION: USE ONLY AS DIRECTED" if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

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

IN THE MATTER OF

RINALDO J. SOLARI, TRADING AS JOHN SOLARI & COMPANY AND AS PAR-EX PRODUCTS COMPANY

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

Docket 4895. Complaint, June 12, 1945¹—Decision, Oct. 7, 1946

Where an individual engaged among other things in the interstate sale and distribution of a food product which he designated "Par-Ex Hollandaise Sauce"—

Represented through use of the word "Hollandaise" for his said sauce, and on labels attached to containers, and in advertising streamers or stickers furnished to merchants for use in the display thereof, that his said product was made according to the generally accepted practice in making Hollandaise sauce and that its fatty content was exclusively butter;

The facts being that his said product was not genuine Hollandaise sauce as long known to and understood by cooks, chefs, housewives, and a substantial portion of the consuming public and as specified in recipes, cook books and other publications, namely, a sauce in which a substantial portion, and the only fatty ingredient is butter, but contained approximately 70 percent vegetable oil and only about 10 percent butter;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that his said product was genuine Hollandaise sauce and thereby to induce the purchase thereof, whereby trade was diverted unfairly to him from competitors who sold and distributed the genuine and more costly Hollandaise sauce, to the injury of competition in commerce:

Held, That such acts and practices were all to the prejudice and injury of the public and his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Messrs. Jacob J. & Jay O. Kramer, of New York City, for respondent.

AMENDED 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 Rinaldo J. Solari, an individual trading as John Solari & Co. and as Par-Ex Products Co., hereinafter referred to as respondents, has violated the provisions of

¹ Amended.