

Complaint

IN THE MATTER OF

ARTHUR E. WEISBERG, TRADING AS EXCELLEX CO.,
AND FRIZZELL ADVERTISING AGENCY, INC.¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5445. Complaint, June 17, 1946—Decision, Mar. 24, 1947*

Where an individual engaged in the interstate sale and distribution of a medicinal product designated "XLX Vita-Grey Tablets," in advertisements in newspapers and periodicals, and circulars, leaflets, and other advertising material—

Represented falsely that gray hair is caused by a vitamin deficiency and that said product is effective in restoring the original color thereto, through such statements as "Science has discovered a vitamin containing Calcium Pantothenate which has brought back the original color to thousands of gray heads. No drugs, dyes nor tints—just a simple, natural method of restoring a vitamin deficiency which has caused your hair to turn prematurely gray";

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

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. B. W. Stanley for the Commission.

Mr. Frank E. Weisberg, of Minneapolis, Minn., for Arthur E. Weisburg.

Mr. Charles H. Rowan, of Milwaukee, Wis., for Frizzell Advertising Agency, Inc.

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

¹ The Commission on March 24, 1947, issued an order dismissing complaint without prejudice as to Frizzell Advertising Agency, Inc., as follows:

"This matter coming on to be heard by the Commission as to respondent Frizzell Advertising Agency, Inc., and it appearing that, through inadvertence, said respondent was not afforded an opportunity, prior to the issuance of the complaint herein, to dispose of this matter through the execution of a stipulation as to the facts and an agreement to cease and desist from the practices in question;

"And it further appearing that said respondent has now executed a stipulation as to the facts and an agreement to cease and desist from the practices charged in the complaint, and that such stipulation and agreement has been approved and accepted by the Commission, and the Commission being of the opinion that in the circumstances the complaint should be dismissed as to said respondent without prejudice;

"It is ordered, That the complaint herein be, and it hereby is, dismissed as to respondent. Frizzell Advertising Agency, Inc., without prejudice to the right of the Commission to institute further proceedings in the matter should future circumstances warrant such action."

Complaint

43 F. T. C.

Trade Commission having reason to believe that Arthur E. Weisberg, an individual, trading as Excellex Co., and Frizzell Advertising Agency, Inc., a corporation, 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Arthur E. Weisberg, is an individual trading and doing business as Excellex Co., with his principal place of business located at 1100 Vincent Avenue N, Minneapolis, Minn.

PAR. 2. Respondent, Arthur E. Weisberg, has been engaged in the sale and distribution of a medicinal product designated XLX Vita-Grey Tablets. This respondent has caused said product, when sold, to be transported from the State of Minnesota to purchasers thereof located in various other States of the United States, 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.

PAR. 3. Respondent, Frizzell Advertising Agency, Inc., is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business located at 1201-1202 Plymouth Building, in the city of Minneapolis, State of Minnesota. This respondent operates an advertising agency and as such is engaged in formulating, editing, selling, and distributing advertising matter. Frizzell Advertising Agency, Inc., is the advertising representative or agent of respondent, Arthur E. Weisberg, and prepares and assists in the preparation of advertising material used by the said Arthur E. Weisberg and has aided in the dissemination of such advertising material in connection with the sale and distribution of the medicinal product hereinabove designated including the advertising matter hereinafter set out.

PAR. 4. In the course and conduct of their aforesaid businesses, the respondents have disseminated, and have caused the dissemination of, false and misleading 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. Respondents have also disseminated, and have caused the dissemination of, false 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 false, misleading, and deceptive statements and representations 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:

DOES GRAY HAIR
Add Tragic Years to
YOUR APPEARANCE?

What a pity that so many people are afflicted with this sign of advanced years long before their age warrants it. But they need despair no longer. Science has discovered a vitamin containing Calcium Pantothenate which has brought back the original color to thousands of gray heads.

No Drugs, Dyes, nor Tints—just a simple, natural method of restoring a vitamin deficiency which has caused your hair to turn prematurely gray. XLX Vita-Grey Tablets are easy to use—just one tablet a day, and easy to buy—\$1 for 30 Tablets or a month's supply. Use for one week and if not satisfied return the balance and your money will be cheerfully refunded.

Banish Gray Hair the Vitamin Way.

PAR. 5. Through the use of the foregoing statements and representations, and others of the same import not specifically set out herein, respondents represent that gray hair is caused by a vitamin deficiency, and that the product XLX Vita-Grey Tablets is effective in restoring the original color to gray hair.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, gray hair is not known to be due to a vitamin deficiency. The product XLX Vita-Grey Tablets will not restore the original color or any color resembling the original color to gray hair.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead 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 said product.

PAR. 8. The aforesaid acts and practices of the 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 June 17, 1946, issued and subsequently served its complaint in this proceeding upon the respondents, Arthur E. Weisberg, trading and doing business as Excellex Co., and Frizzell Advertising Agency, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. On July 8, 1946, respondent, Arthur E. Weisberg, filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Respondent, Frizzell Advertising Agency, Inc., having entered into a stipulation as to the facts and an agreement to cease and desist from the practices charged in the complaint, and such stipulation and agreement having been approved and accepted by the Commission, the complaint was dismissed as to said respondent without prejudice to the right of the Commission to institute further proceedings in the matter should future circumstances warrant such action. Thereafter, the proceeding regularly came on for final consideration by the Commission as to respondent, Arthur E. Weisberg, on the complaint and said respondent's answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Arthur E. Weisberg, is in an individual trading and doing business as Excellex Co., with his principal place of business located at 1100 Vincent Avenue N., Minneapolis, Minn. (The word "respondent" as used hereinafter refers only to this respondent.)

PAR 2. Respondent has been engaged in the sale and distribution of a medicinal product designated XLX Vita-Grey Tablets. Respondent has caused said product, when sold, to be transported from the State of Minnesota to purchasers thereof located in various other States of the United States, 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.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning said product by means of the United States mails and by 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, false 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 false, misleading, and deceptive statements and representations 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:

DOES GRAY HAIR

Add Tragic Years to

YOUR APPEARANCE?

What a pity that so many people are afflicted with this sign of advanced years long before their age warrants it! But they need despair no longer. Science has discovered a vitamin containing Calcium Pantothenate which has brought back the original color to thousands of gray heads.

No Drugs, Dyes, nor Tints—just a simple, natural method of restoring a vitamin deficiency which has caused your hair to turn prematurely gray. XLX Vita-Grey Tablets are easy to use—just one tablet a day, and easy to buy—\$1 for 30 Tablets or a month's supply. Use for one week and if not satisfied return the balance and your money will be cheerfully refunded.

Banish Gray Hair the Vitamin Way.

PAR. 4. Through the use of the foregoing statements and representations, and others of the same import not specifically set out herein, respondent has represented that gray hair is caused by a vitamin deficiency, and that the product XLX Vita-Grey Tablets is effective in restoring the original color to gray hair.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, gray hair is not known to be due to a vitamin deficiency. The product XLX Vita-Grey Tablets will not restore the original color or any color resembling the original color to gray hair.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead 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 said product.

Order

43 F. T. C.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission as to respondent, Arthur E. Weisberg, upon the complaint of the Commission and the answer of said respondent, in which answer said respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That said respondent, individually and trading as Excellex Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal product XLX Vita-Grey Tablets, or any other product composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under 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 "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That it has been established that gray hair results from a vitamin deficiency;

(b) That the use of respondent's product will prevent or end gray hair or restore the original color by any color resembling the original color to gray hair.

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

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

Syllabus

IN THE MATTER OF

MID-WEST DRUG CO., INC., AND J. R. DALE AND W. O. DUANE

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

Docket 5036. Complaint, Aug. 27, 1943—Decision, Mar. 26, 1947

While preparations containing thyroid have been used for the treatment of obesity due to endocrine disfunction, when so used the patient must be constantly under specialized medical supervision so that the treatment may be regulated in accordance with the result of physical examination, laboratory findings, and subjective study in order to avoid serious injury to health.

Where a corporation and two individuals, officers thereof, engaged in the interstate sale and distribution of a medicinal preparation designated "Ju-Van," represented as a treatment for obesity; through newspaper advertisements and other advertising literature—

- (a) Represented that said preparation was a cure or remedy for obesity and constituted a competent, safe, and effective treatment therefor; was an easy way to reduce excess weight without dieting or exercise; and that, through use thereof, excess body fat could be reduced naturally and safely;

The facts being the product in question, composed principally of desiccated thyroid, powdered digitalis, and powdered phytolacca, was not a cure or remedy for obesity or a competent, safe, and effective treatment therefor;

- (b) Failed in its said advertisements to reveal that use of said preparation under prescribed or usual conditions might result in serious and irreparable injury to health by reason of its thyroid content, continued ingestion of which accelerates the rate of metabolism and thereby burns the body tissues in excess of what is normal, and use of which may produce headaches, pains, nausea, vomiting, vertigo, insomnia, and physical exhaustion, permanent injury to tissues, to organic function, and to the entire muscular system, irreparable injury to the heart muscles, and possible premature death; that indiscriminate and continued use might produce serious injury to the heart by reason of the presence of digitalis therein; and that the preparation, by reason of the presence therein of the laxative drug phytolacca, was potentially dangerous when taken by one suffering from abdominal pains, nausea, or other symptoms of appendicitis;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and that said preparation might be taken without ill effects, and thereby into the purchase of 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.

Before *Mr. W. W. Sheppard*, trial examiner.
Mr. DeWitt T. Puckett for the Commission.