

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.

Complaint

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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 Mid-West Drug Co., Inc., a corporation, and J. R. Dale and W. O. Duane, individually and as officers of Mid-West Drug Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mid-West Drug Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in Cal-Wayne Building, Fort Wayne, Ind.

Respondents, J. R. Dale and W. O. Duane, are president and secretary-treasurer, respectively, of the respondent, Mid-West Drug Co., Inc., with their post office addresses, respectively, at 2821 Plaza Drive and 449 Penn Place, both in Fort Wayne, Ind. Said individual respondents directed and controlled the policies and practices of said corporate respondent at all times mentioned herein.

PAR. 2. Said respondents are now and for more than 1 year last past have been engaged in the sale and distribution of a medicinal preparation designated "Ju-Van," represented as a treatment for obesity.

In the course and conduct of their aforesaid business, respondents caused and have caused said medicinal preparation when sold by them to be transported from their said place of business in the State of Indiana, to purchasers thereof located in various 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 their said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. 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 medicinal preparation 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 product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal 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 hereinabove set forth by the United States mails, by advertisements in newspapers and periodicals by means of other advertising literature, are the following:

LOSE WEIGHT—GAIN PLEASURE. Enjoy yourself at normal weight. JU-VAN is guaranteed to help you reduce the safe, natural way. No starving diets. No tiring exercise. JU-VAN is used and praised by thousands. Your money back if you are not satisfied.

MRS. SOMERVILLE LOSES 42 POUNDS. Wheeling woman writes: "Have lost 42 pounds using Ju-Van, and I feel fine. My friends say I don't look like the same person. I can never praise your product enough and have told many people about it." Amazing results without diet or exercise. Safe, easy, and economical. Try a box today.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, but not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's product, respondents represent that said medicinal preparation is a cure or remedy for obesity and constitutes a competent, safe, and effective treatment therefor; that it is an easy way to reduce excess weight without dieting or exercise, and that through the use of said preparation, excess body fat can be reduced naturally and safely.

PAR. 5. The medicinal preparation Ju-Van, sold and distributed by the respondents, as aforesaid, is composed principally of the following ingredients:

Desiccated thyroid.

Powdered digitalis.

Powdered phytolacca.

PAR. 5. The statements and representations set out and referred to in paragraph 3 hereof are false and misleading and deceptive. In truth and in fact, said medicinal preparation is not a cure or remedy for obesity, nor is it a competent, safe, and effective treatment therefor. Preparations containing thyroid have been used for the treatment of obesity due to endocrine dysfunction, but 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.

PAR. 7. In addition to the false and misleading statements hereinabove set forth and referred to, respondents are also engaged in the dissemination of false advertisements, as aforesaid, in that the respondents fail to reveal to purchasers and prospective purchasers that the use of said medicinal preparation Ju-Van, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health in that said preparation contains a dangerous drug, desiccated thyroid, the continued ingestion of which accelerates the rate of metabolism, thereby burning the body tissues, especially that of fat tissue, in excess of that which is normal. Thyroid is a dangerous drug, the use of which may produce headaches, muscular and auricular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, tachycardia, permanent injury to tissues, organic function, and the entire muscular system, irreparable injury to the heart muscles, with auricular fibrillations, and possible premature death. Furthermore, by reason of the presence of the drug digitalis in said preparation, its indiscriminate and continued use may produce serious injury to the heart. Moreover, said preparation contains the laxative drug phytolacca and said preparation is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 8. The use by the respondents of the false and misleading statements and representations with respect to said preparation disseminated as aforesaid, has had, and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and that said preparation may be taken without ill effects, and into the purchase of substantial quantities of said medicinal preparation because of such mistaken and erroneous belief.

PAR. 9. 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 August 27, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Mid-West Drug Co., Inc., a corporation, and J. R. Dale and W. O. Duane, individually and as officers of the Mid-West Drug Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issu-

ance of said complaint, no answer having been filed and the time for filing said answer having expired and no request for an extension thereof having been made, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission (no testimony was offered by the respondents or any of them) before W. W. Sheppard, 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, the proceeding regularly came on for final hearing before the Commission on the said complaint and testimony and other evidence (the filing of a trial examiner's report and briefs having been waived by all parties and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mid-West Drug Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in Cal-Wayne Building, Fort Wayne, Ind.

Respondents, J. R. Dale and W. O. Duane, are president and secretary-treasurer, respectively, of the respondent Mid-West Drug Co., Inc., with their post office addresses, respectively, at 2821 Plaza Drive and 1526 North Anthony Street, both in Fort Wayne, Ind. Said individual respondents directed and controlled the policies and practices of said corporate respondent at all times mentioned herein.

PAR. 2. For several years prior to March 1943, the respondents engaged in the sale and distribution of a medicinal preparation designated "Ju-Van," represented as a treatment for obesity.

In the course and conduct of their aforesaid business, respondents caused said medicinal preparation, when sold by them, to be transported from their said place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents disseminated and caused the dissemination of false advertisements concerning their said medicinal preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents also disseminated and caused the dissemination of false advertisements concerning their said product by various means for the pur-

pose of inducing and which were likely to induce, directly or indirectly, the purchase of their said medicinal 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 hereinabove set forth by the United States mails, by advertisements in newspapers and by means of other advertising literature, are the following:

LOSE WEIGHT—GAIN PLEASURE. Enjoy yourself at normal weight. **JU-VAN** is guaranteed to help you reduce the safe, natural way. No starving diets. No tiring exercise. **JU-VAN** is used and praised by thousands. Your money back if you are not satisfied.

MRS. SOMERVILLE LOSES 42 POUNDS. Wheeling woman writes: "Have lost 42 pounds using **Ju-Van**, and I feel fine. My friends say I don't look like the same person. I can never praise your product enough and have told many people about it." Amazing results without diet or exercise. Safe, easy, and economical. Try a box today.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, but not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondents' product, respondents represented that said medicinal preparation is a cure or remedy for obesity and constitutes a competent, safe, and effective treatment therefor; that it is an easy way to reduce excess weight without dieting or exercise; and that, through the use of said preparation, excess body fat can be reduced naturally and safely.

PAR. 5. The medicinal preparation **Ju-Van**, sold and distributed by the respondents as aforesaid, is composed principally of the following ingredients:

Desiccated thyroid, 1 gram (50 percent stronger than U. S. P.),

Powdered digitalis, $\frac{1}{5}$ grain,

Powdered phytolacca, 1 grain.

PAR. 6. The statements and representations set-out and referred to in paragraph 3 hereof are false, misleading, and deceptive. In fact, said medicinal preparation is not a cure or remedy for obesity, nor is it a competent, safe, and effective treatment therefor. Preparations containing thyroid have been used for the treatment of obesity due to endocrine disfunction, but 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.

PAR. 7. In addition to the false and misleading statements hereinabove set forth and referred to, respondents are also engaged in the dissemination of false advertisements, as aforesaid, in that the respondents fail to reveal to purchasers and prospective purchasers the material fact that the use of said medicinal preparation Ju-Van, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health in that said preparation contains a dangerous drug, desiccated thyroid, the continued ingestion of which accelerates the rate of metabolism, thereby burning the body tissues, especially that of fat tissue, in excess of that which is normal. Thyroid is a dangerous drug, the use of which may produce headaches, muscular and auricular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, tachycardia, permanent injury to tissues, organic function, and the entire muscular system, irreparable injury to the heart muscles, with auricular fibrillations, and possible premature death. Furthermore, by reason of the presence of the drug digitalis in said preparation, its indiscriminate and continued use may produce serious injury to the heart. Moreover, said preparation contains the laxative drug phytolacca and said preparation is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 8. The use by the respondents of the false and misleading statements and representations with respect to said preparation disseminated as aforesaid, has had and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and that said preparation may be taken without ill effects, and into the purchase of substantial quantities of said medicinal preparation because of such mistaken and erroneous belief.

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 complaint of the Commission and testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission

theretofore duly designated by it, in support of the allegations of said complaint (no testimony having been offered in opposition thereto, and the filing of a trial examiner's report upon the evidence and briefs having been waived by all parties and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Mid-West Drug Co., Inc., a corporation, and its officers, and J. R. Dale and W. O. Duane, individually and as officers of the Mid-West Drug Co., Inc., and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation known as "Ju-Van," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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 by implication that said preparation is a cure or remedy for obesity or that it constitutes a safe, competent, or effective treatment therefor.

2. 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 fails to reveal that the unsupervised use of respondent's preparation "Ju-Van," or any other preparation of substantially similar composition, by persons not skilled in the diagnosis and treatment of thyroid conditions may result in serious and irreparable injury to health and may cause permanent injury to tissues, organic function, and the entire muscular system.

3. 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 respondents' preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to comply with the 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.

Syllabus

IN THE MATTER OF

FEDERAL MILITARY EQUIPMENT CORP. AND HARRY
DRATH, MAX SCHWARTZ, AND AL B. WOLFCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5096. Complaint, Dec. 11, 1943—Decision, Mar. 26, 1947*

Where a corporation, and three individuals who owned, dominated and managed it, acting with practically the same freedom as though no corporation existed, and who, in carrying on business as partners and in operating a number of retail stores, made use interchangeably of the corporate and trade names below set forth; engaged in the interstate sale and distribution of military insignia similar to those required by the United States government for its military personnel, and of clothing and novelties—

- (a) Falsely represented through the use of the corporate name Federal Military Equipment Corporation and the trade name Federal Military Equipment Co., on their stationery, letterheads, billheads, envelopes, requisition blanks, and other advertising media, that their business was an agency or representative of, or in some manner connected with, the military forces or Government of the United States; and
- (b) Represented through the use of the word "manufacturers" on their letterheads and by other means, that they owned, operated or controlled a factory or factories where their merchandise was made and that they were the manufacturers thereof;

The facts being that they neither owned, operated or controlled a factory wherein was made any substantial portion of their merchandise, which they purchased from others, and they were not manufacturers, with whom, rather than wholesalers, jobbers, or other dealers, many of the purchasing public prefer to deal by reason, among others, of the apprehended opportunities to secure lower prices and other advantages;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their business was connected with the military forces or government of the United States, and that they were the manufacturers of their merchandise, 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. Miles J. Furnas* and *Mr. Charles B. Bayly*, trial examiners.

Mr. Joseph Callaway for the Commission.

Mr. Benjamin Cohen, of New York City, for respondents.