

Syllabus

IN THE MATTER OF

LEWMAN A. LANE, TRADING AS D. J. LANE CO. 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 5252. Complaint, Nov. 24, 1944—Decision, Feb. 27, 1948*

Where an individual engaged in the interstate sale and distribution of certain medicinal preparations which were intended for use in the treatment of asthma and hay fever and were designated as "D. J. Lane's Treatment," "D. J. Special Elixir," "Special Tablets," and "Nasal Ointment"; and his advertising agent; in advertisements of said "Treatment," in newspapers and other periodicals, chiefly, and in form letters sent to those replying—

- (a) Falsely represented that their said "Treatment" constituted a remedy for asthma and hay fever, that the "Treatment" and the "Tablets" which they sent to the prospective purchaser replying to the contact advertisement, constituted a cure or remedy for so-called "uncomplicated" asthma, and that those having "symptoms of bronchial or wet asthma" should take their "Special Elixir" at the same time they took the "Treatment" for the "paroxysms of asthma";
- (b) Falsely represented further in the aforesaid and other follow-up form letters sent to prospective purchasers that use of the "Treatment" or the "Elixir," as aforesaid, or both, as the case might be, constituted an effective remedy for different forms of asthma and that the purchasers could readily distinguish between the symptoms "of plain or dry asthma, requiring the "Treatment," and symptoms of the "bronchitis or wet asthma" requiring the "Elixir";

The facts being there are no such expressions known to the medical profession as "dry" asthma or "wet" asthma; determination of the cause of an asthmatic condition requires a thorough physical examination by a qualified physician, and the layman is unable with the information set out in the advertising material concerned to distinguish between one asthmatic condition and another or to determine which of said preparations may be indicated; the primary, if not the only therapeutic value of either the "Treatment" or "Elixir" was due to the potassium iodide ingredient which gave the user temporary relief; and, with that exception, preparations in question were not an effective treatment for asthma, and would also neither cure hay fever nor alleviate its symptoms;

- (c) Falsely represented that asthma is a derangement of the nervous system which affects the bronchial tubes; and
- (d) Falsely represented that his said preparations were in all cases safe or harmless;

The facts being that the "Tablets" and "Ointment" each contained ephedrine, which, in overdoses, produces toxic symptoms, must be prescribed with caution in certain cases and conditions, and in others not given at all;

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"Ointment" contained also benzocaine, a local anaesthetic; and the "Treatment," by reason of its potassium iodide content, is likely to be harmful in the case of those having goiter, or tuberculosis in either the active or arrested stage;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said preparations possessed therapeutic value which they did not, and were in all cases safe and harmless, and to induce thereby the purchase by it of large 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 acts and practices in commerce.

In said proceeding in which the complaint charged also that respondents' advertisements concerning the "Treatment," "Tablets," and "Ointment" constituted false advertisements due to their failure to reveal affirmatively the facts as to the preparations' potential danger, by reason of their potassium iodide and ephedrine content, the Commission was not in a position to determine, on the basis of the information before it, that the potential dangers of said preparations, and which, as found by it, were not safe and harmless for all, were of sufficient seriousness to justify a requirement that said respondents make an affirmative disclosure of all the facts in their advertisements.

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

Mr. William L. Taggart for the Commission.

Mr. D. M. Sparks, of St. Marys, Kans., for Lewman A. Lane.

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 Lewman A. Lane, an individual, trading as D. J. Lane Co., and Frank E. Whalen, an individual, 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. The respondent, Lewman A. Lane, is an individual, trading as D. J. Lane Co., with his place of business located at St. Mary's, Kans. This respondent is now, and has been for several years last past, engaged in offering for sale, sale, and distribution of certain medicinal preparations designated as "D. J. Lane's Treatment," "D. J. Lane's Special Elixir," "Special Tablets," and "Nasal Ointment." The said medicinal preparations are shipped and transported from the principal place of business of this respondent in the State of Kansas

to purchasers located in various other States of the United States and in the District of Columbia. This respondent maintains, and at all times mentioned herein, has maintained, a course of trade in commerce in said preparations between and among the various States of the United States and in the District of Columbia.

PAR. 2. Prior to January 4, 1943, Frank E. Whalen Advertising Co., Inc., a Missouri corporation, was the advertising agency for the respondent Lewman A. Lane. The respondent, Frank E. Whalen, was, during said time, the president of said corporation and directed and controlled its affairs. Said corporation was dissolved on or about January 4, 1943, and since said time the respondent, Frank E. Whalen, acting as an individual, has been the advertising agent for the respondent Lewman A. Lane. During all the times mentioned herein the said Frank E. Whalen, as the principal officer of the Frank E. Whalen Advertising Co., Inc., or as an individual, prepared and assisted in the preparation of newspaper and periodical advertising for the said Lewman A. Lane and disseminated and aided in the dissemination of such advertising matter. The post-office address of this respondent is Land Bank Building, 15 West Tenth Street, Kansas City, Mo.

PAR. 3. In the course and conduct of his business, and in furtherance of a plan to secure purchasers of the medicinal preparations of the respondent, Lewman A. Lane, the respondent, Frank E. Whalen, has caused and is now causing the dissemination of false advertisements concerning said preparations by the United States mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and this respondent has also disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Typical of such false advertisements disseminated by means of advertisements inserted in newspapers is the following:

Asthma and Hay
Fever Treatment
On Free Trial

ST. MARY'S, KANS.—D. J. Lane Co., * * * Lane Building, St. Mary's, Kans., manufactures a medicine for the relief of Asthma and Hay Fever symptoms in which they have so much confidence that they will send by mail a regular \$1.25 bottle to anyone who will write for it. Use it according to directions on label and after you are completely satisfied, pay only \$1.25. If not satisfied, you owe nothing but a report. Send your name and address today, stating which symptoms you have.

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When favorable replies are received as a result of the publication of said advertisement, a letter is transmitted by means of the United States mails to the prospective purchaser by respondent, Lewman A. Lane, advising that a bottle of Asthma Treatment is being sent together with a package of tablets which are stated to be an important part of this treatment for so-called uncomplicated Asthma, and that the medicines are to be paid for after trial by the prospective purchaser. This letter also states, among other things:

It is contended by physicians that where Bronchitis is present, medicines must be taken for that particular condition, and that is why I have two preparations; one D. J. Lane's Elixir which I send to people who have this Bronchial complication. You understand the Asthma Treatment is intended for plain uncomplicated Asthma. For Bronchial or wet Asthma you should also have the Elixir to take with the Wet Treatment.

If a desire for the hay-fever treatment is indicated, the Asthma treatment, the tablets and a tube of nasal ointment are sent.

PAR. 4. Likewise in the course and conduct of his said business, respondent, Lewman A. Lane, has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning his 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal 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 above set forth, by the United States mails and in circulars and other advertising media, are the following:

The Asthma Treatment which I am sending you today is intended to bring into the system those ingredients, generally recognized to be effective in treating and controlling what are known as paroxysms of Asthma, paroxysms being the attack which results in wheezing and shortness of breath * * *. It is contended by physicians that where Bronchitis is present, medicines must be taken for that particular condition; that is why I have two preparations; one, D. J. Lane's Elixir which I send to people who have this Bronchial complication. You understand, the Asthma Treatment is intended for plain uncomplicated Asthma. For Bronchial or wet Asthma you should also have the Elixir to take with the Asthma Treatment * * *. If you have this Bronchial complication and you will know whether or not you cough and spit up phlegm, then in my opinion, you should send for a bottle of my Elixir to take at the same time that you

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take the Asthma medicine. I want you to be sure and understand that if you have this Bronchial complication the Asthma Treatment alone will not be sufficient. In fact, I do not want you to take the Asthma medicine, if you have any symptoms of Bronchitis. I would much rather send you the postage for the return of the other medicine than have you use it if this other condition is present. I feel you should have my explanation between the difference of uncomplicated Asthma and Bronchitis Asthma. I also feel that you realize the importance of having a Bronchial medicine if the symptoms of Bronchitis are present.

You realize that in correcting an asthmatic condition always considered stubborn, one bottle of medicine cannot produce the desired result. It can bring relief, and may even in a few cases bring almost miraculous freedom from discomfort, but to do all that you hope for, the treatment should be carried on persistently, without interruption, following directions carefully.

Some few people report no improvement whatever from the first bottle. These are hard to account for, but everyone does not respond alike to treatment. I am of the opinion that it is not the fault of the medicine but is due generally to some other cause or complication that retards the action of the medicine taken. You, no doubt, know of some of your friends who have been ill with exactly the same disease. They both take the same treatment. One will be well in a few days, while the other recovers more slowly. It is not the fault of the medicine that the second patient is not well as quickly as the first, but it is due to some other cause or derangement in the second person's constitution.

I have been sending my medicine all over the country for the past thirty years. In that time I have corresponded with hundreds of thousands of sufferers. It has been my observation and conviction that most troubles will yield when the right medicines are used. Now if the medicine you have taken did not help you, I would say you must have some bronchial complication with your other trouble. If you have, as I told you in my first letter, you cannot expect relief from the asthma treatment alone.

A complicated case requires the bronchial elixir as well as the asthma treatment, and both should do the work if used as directed.

The asthma treatment was sent you for shortness of breath. This is what is known as a symptom of true asthma. The bronchial elixir I speak of is for bronchial irritations. You will realize I know, why I am so insistent that my customers should use both medicines for the double trouble. Medicine must be taken to combat both. That, in my opinion, is the only way to get rid of them.

My combined treatment brings results in so many cases where the single treatment has not been successful. That is why I offered to send the bronchial elixir to you in my first letter. I do not blame you for not sending for it, but neither do I want you to blame my medicine if you have not had the results you expected. The single treatment is intended for and is sufficient for many cases, but a great number of men and women have the bronchial complications and do not realize it. If you have not been helped I am of the firm conviction that you have bronchial trouble and that you need the bronchial elixir as well as the asthma treatment.

If it were possible for you to see and talk with some of these customers of mine who have used my medicines and have written me that they were freed from their troubles by my combined treatment, you would be convinced of their value

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and be more than anxious to continue until you experienced the same freedom from bronchial asthma.

Hay Fever is a very peculiar and frequently quite a stubborn disease to correct. I fully believe that I have the medicine that should help you although in all fairness, I must tell you that most people require more than one bottle. This is only natural to expect as the symptoms of the disease vary with different individuals. I am sure that you appreciate that fact.

From the above you can readily see that Asthma is a word used to describe some derangement of the nervous system that affects the bronchial tubes, causing them to contract, thereby shutting off the sufferer of air, resulting in wheezing and shortness of breath.

After relief is obtained, continuance with the medicines for a few days will do no harm. In fact, many of my customers say they continue after relief is secured just as a precaution against return of the paroxysms. Such action I heartily commend as being practical and good sense.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import but not specifically set out herein, respondent, Lewman A. Lane, represents that the use of his said preparations, singly or in combination, will cure asthma and hay fever and will fully alleviate all of the symptoms of asthma and hay fever; that there is a distinction between so-called uncomplicated asthma and bronchial asthma and that the ordinary lay person can distinguish this difference and determine which of the medicines is indicated; that asthma is a derangement of the nervous system which affects the bronchial tubes; that all of said preparations are harmless and may be taken by all persons without ill effects and that this respondent has been selling said preparations all over the country for thirty years.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said preparations, used singly or in any combination, will not cure asthma or hay fever nor will they, however used, fully alleviate all of the symptoms of asthma or hay fever. These preparations, individually or collectively, cannot be truthfully characterized as an asthma treatment since they have no prolonged effects upon the cause of, the natural history of or the symptoms of, asthma. The effects are temporary and tend only to ameliorate some, but not all, of the symptoms of asthma during the time the drugs are taken. The said preparations do not constitute a competent or effective treatment for hay fever. The distinction set out in the advertising between so-called uncomplicated asthma and bronchial asthma is not in accordance with the facts and it is not possible for a lay person, by means of the information set out in the advertisements, to draw any proper distinction or to determine which of the medicines is indicated. There is no scien-

tific basis for the claim that asthma is a derangement of the nervous system which affects the bronchial tubes. The preparations known as D. J. Lane's Treatment, Special Tablets, and Nasal Ointment are not harmless and their use may be dangerous to the health of certain individuals. Respondent has not been selling said preparations for 30 years but only since about 1941.

PAR. 7. All of the aforesaid advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations or material with respect to the consequences which may result from the use of the preparations D. J. Lane's Treatment, Special Tablets, and Nasal Ointment, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, the preparation D. J. Lane's Treatment contains sufficient quantities of the drug potassium iodide so as to cause, under certain conditions, serious injury to the health of the user. This preparation should not be used by persons suffering from goiter or tuberculosis, in either the active, or arrested stage. In cases of goiter this drug tends to convert a benign adenoma into a toxic adenoma. In cases of arrested tuberculosis, the tendency is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis, the drug tends to prevent or retard the healing process. The use of said preparation may also cause a skin rash. The preparations, Special Tablets, and Nasal Ointment contain the drug ephedrine in sufficient quantities so as to be potentially dangerous when taken as directed. Continued use may cause nervousness and these preparations should not be used by persons with high blood pressure, heart disease, diabetes, or thyroid trouble. To do so may be injurious to health.

PAR. 8. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that all of said preparations may be taken and used under all circumstances and conditions without ill effects, and into the purchase of said preparations because of such erroneous and mistaken belief.

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 November 24, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said 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 respondents of their joint answer to such complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony, and other evidence, the recommended decision of the trial examiner and exceptions thereto filed by counsel in support of the complaint, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents 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. The respondent, Lewman A. Lane, is an individual trading and doing business as D. J. Lane Co. with his place of business located at St. Marys, Kans. Respondent, Lane, is engaged in the sale and distribution of a number of medicinal preparations intended for use in the treatment of asthma and hay fever and designated respectively as "D. J. Lane's Treatment," "D. J. Lane's Special Elixir," "Special Tablets," and "Nasal Ointment." These preparations are shipped and transported by respondent, Lane, from his place of business in St. Marys, Kans., to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent, Lane, maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent, Frank E. Whalen, is an individual engaged in the advertising business with his office and principal place of business located in the Land Bank Building, 15 West Tenth Street, Kansas

City, Mo. Respondent, Whalen, is the advertising agent for the respondent, Lewman A. Lane, and as such advertising agent he prepares and assists in the preparation of newspaper, periodical, and other advertising material for the said Lewman A. Lane and places such advertising material with various newspapers and periodicals for publication.

PAR. 3. In the course and conduct of their respective businesses, and in an effort to obtain purchasers of respondent Lane's preparations, the respondents have disseminated and have caused the dissemination, through the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a great many advertisements concerning said preparations. Typical of such advertisements disseminated chiefly by means of advertisements inserted in newspapers and other periodicals are the following:

ASTHMA AND HAY FEVER TREATMENT ON FREE TRIAL

ST. MARY'S, KANS.—D. J. Lane Company, 122 Lane Building, St. Mary's, Kans., manufactures a medicine for the relief of Asthma and Hay Fever symptoms in which they have so much confidence that they will send by mail a regular \$1.25 bottle to anyone who will write for it. Use it according to directions on label and after you are completely satisfied, pay only \$1.25. If not satisfied, you owe nothing but a report. Send your name and address today, stating which symptoms you have (Com. Ex. 7-F).

ASTHMA

Hay Fever Symptoms
RELIEVED or No Pay!

We will send any sufferer a \$1.25 bottle of LANE'S TREATMENT by mail on FREE TRIAL. Use as directed on label—when satisfied send \$1.25 in payment. If not—report cancels charge. Write today stating trouble. D. J. Lane Company, 122 Lane Bldg., St. Marys, Kans (Com. Ex. 10-k).

PAR. 4. Upon receipt of a request for the preparation so advertised as a treatment for asthma, a form letter is transmitted by respondent, Lane, to the prospective purchaser by means of the United States mails, advising such prospective purchaser that a bottle of "Asthma Treatment" is being sent. This letter further informs the prospective purchaser that a package of tablets, which are stated to be an important part of the treatment for so-called "uncomplicated" asthma, is also being included, and that the medicines are to be paid for after a trial. This letter in addition states, among other things, the following:

From the above you can readily see that Asthma is a word used to describe some derangement of the nervous system that affects the bronchial tubes, causing

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them to contract, thereby shutting off the supply of air, resulting in wheezing and shortness of breath. Nearly every physician considers the trouble constitutional and advises internal treatment to relieve the discomfort caused by the attack. The treatment which is being sent you today is intended to bring into the system those ingredients generally recognized to be effective in treating what are known as Paroxysms of Asthma, said Paroxysms being the attack which results in the wheezing and shortness of breath.

This is most important. If you will again read the above description of Asthma, you will find the Encyclopedia further states: "Asthma is frequently associated with some form of chest complaint, more particularly Bronchitis; and hence, the term Bronchitis Asthma." Physicians state that Bronchitis is recognized as an inflammation of the mucous membrane lining the bronchial tubes. A condition that manifests itself in coughing, wheezing and the raising of phlegm—usually worse in damp weather than in dry weather. For this condition physicians advise a medicine to soothe and aid nature in healing the inflamed membranes. It is contended by physicians that where Bronchitis is present, medicines should be taken to relieve the symptoms of that particular condition. That is why we have D. J. Lane's Special Elixir, which is sent to people who have this bronchial symptom. You understand, the Asthma Treatment mailed you today is only intended to relieve the paroxysms of plain or dry Asthma. For the symptoms of Bronchial or wet Asthma you should also have this Special Elixir to take at the same time you take the medicine for the paroxysms of Asthma (Com. Ex. 11-g).

We hope we have been able to make our proposition clear in this letter. It is not our intention to attempt to prescribe medicines for you. However, in justice to you and to ourselves, we feel you should have our opinion of the difference between plain or dry Asthma and Bronchitis or wet Asthma. We also feel that you should realize the importance of having a Bronchial medicine if the symptoms of Bronchitis are present (Com. Ex. 11-g).

In another such letter, which is later sent to the prospective purchaser if he does not order the Special Elixir in accordance with the suggestions made in the first letter, are the following, among other statements:

Most people using these medicines have wisely bought two packages at a time, which gives a continuation of use toward the desired goal of happiness. This eliminates the peril of any possible set-back resulting from an interruption in the course of treatment, and gives you a sufficient supply to last for some time. Many sufferers of asthmatic paroxysms have found the two packages sufficient for their purpose (Com. Ex. 11-h).

You should be able easily to judge the need of the elixir. The medicine you are now using was sent to you to relieve shortness of breath, gasping for air, and wheezing. These are known as symptoms of plain or dry asthma. If you have only these symptoms, you need not concern yourself with the bronchial elixir. On the other hand, if you cough considerably, detect a discharge from the throat or nose and have other bronchial symptoms, you should obtain a bottle of the elixir and use it faithfully in connection with the medicine you now have. Most people suffering from asthma either have or develop eventually these annoying bronchial symptoms (Com. 11-h).

Why not give the Bronchial Elixir a trial? Use it at the same time you are taking the asthma medicine and see if the two of them, used together, will bring the relief you seek. We have had such glowing reports from our customers that use both medicines that we feel we should urge everyone to try them together (Com. Ex. 11-h).

In still other such letters, which are later sent to the prospective purchaser who has still failed to respond to the previous solicitations, are statements of which the following are typical:

The facts are these—there should be symptomatic relief for every sufferer if the right medicines are used. Letters received every day from satisfied customers prove that these were the right medicines for them. Many write Lane's treatment alone relieved them of their asthma paroxysms. Others state the bronchial elixir alone relieved their bronchial irritations and others declare the two medicines taken together were what they used. From these facts we believe the two medicines should be tried by you.

If the medicine sent you reduced your paroxysms, then by all means send for more. We do not and you do not expect a single package to relieve every symptom, but we do hope for such relief when the medicine is continued. If Lane's treatment alone did not relieve you, send for one more package of this fine medicine and a bottle of the bronchial elixir for you to use at the same time (Com. Ex. 11-i).

After relief is obtained, continuing with the medicines for a few days will do no harm. In fact, many customers say they continue after relief is secured just as a precaution against a return of the paroxysms. Such action is heartily commended as being practical and good sense (Com. Ex. 11-l).

PAR. 5. Through the use of the foregoing statements and representations and many others similar thereto the respondents represent (1) that the use of the preparations sold by respondent, Lewman A. Lane, either alone or in combination, will cure asthma and hay fever and will fully alleviate all of the symptoms of these conditions, (2) that there is a difference between so-called "uncomplicated" or dry asthma and "bronchial" or wet asthma, and that the ordinary lay individual can distinguish between the two and thus determine which of the medicines advertised is indicated, (3) that asthma is a derangement of the nervous system which affects the bronchial tubes, and (4) that all of said preparations are safe and harmless and may be taken indiscriminately by all persons without ill effects.

PAR. 6. The formulas of the aforesaid preparations are as follows:

D. J. Lane's Treatment (per ounce)

Potassium Iodide -----	20 grains	Sandalwood -----	15 grains
Sac Palmetto Green -----	60 grains	Grindelia -----	25 grains
Fresh Corn Silk -----	60 grains	Stillingia -----	38 grains
Alcohol -----	8 percent		

(Com. Ex. 1-k)

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D. J. Lane's Special Elixir (per ounce)

Fl. Ex. Euphorbium-----	24 min.	Tr. Gelsemium Green-----	32 min.
Fl. Ex. Lobelia Herb-----	12 min.	Passiflora Green-----	30 grains
Sanguinaria-----	4 min.	Chloroform-----	4 min.
Ft. Ex. Stillingia Dry-----	20 min.	Menthol Syn-----	8/100 grain
Herba Santa-----	5 min.	Guaiacol-----	2 grains
Alcohol-----	14 percent		

(Com. Ex. 1-1)

Special Tablets

Each tablet contains one-quarter grain of Ephedrine Sulphate. (Com. Ex. 1-i).
Nasal Ointment (per pound)

320 grains Benzocaine.	350 grains Lanolin Anhyd.
4 grains Hydrastine Hcl.	½ ounce Olive Oil.
70 grains Ephedrine Alkaloid.	13¾ ounces Petrolatum.

(Com. Ex. 1-j)

PAR. 7. According to the medical testimony in the record, asthma is a condition of the bronchi characterized by edema of the tubes and spasms of the circular muscular fibre surrounding the tubes, producing periodical attacks of difficult breathing, accompanied by wheezing and coughing. It is not, as the respondents represent, a derangement of the nervous system which affects the bronchial tubes. The symptoms of asthma are due in large measure to the presence in the small bronchi of tissue plugs or strings of mucus. One of the ingredients in respondent Lane's Asthma Treatment is Potassium Iodide and this ingredient tends to liquefy mucus, thus enabling the user to cough up the mucus and expectorate it with less difficulty and in this way obtain a measure of temporary relief. This, however, is the primary, if not the only therapeutic value of either the Asthma Treatment or the Special Elixir, and said preparations do not either separately or in combination constitute a cure for asthma and they are not an effective treatment for the condition except insofar as they afford temporary symptomatic relief during the time the preparations are being taken.

There may be a number of causes of the symptoms of bronchial asthma such as tumors in the bronchial tubes, obstructions of the tubes caused by a foreign body, chronic heart disease, and others. In order for the cause of an asthmatic condition to be determined it is necessary for the sufferer to undergo a thorough physical examination by a qualified physician. A lay person would not be able to determine, for example, whether difficult breathing was caused by heart trouble or asthma.

The record discloses that the distinction set out in the respondents' advertising between so-called "uncomplicated" asthma and "bronchial" asthma is without foundation from a medical standpoint, and there are no such expressions known to the medical profession as "dry" asthma or "wet" asthma. It is not possible for a lay person, by means of the information set out in the respondents' advertising material, to draw any proper distinction between one asthmatic condition and another or to determine which of respondent Lane's preparations may be indicated.

The manifestations of hay fever are itching of the nose, itching and redness of the eyes, a watery discharge from the eyes and nose, nasal blocking, and sneezing. The evidence is that through proper management both seasonal hay fever and chronic perennial hay fever may be arrested, but the medical witnesses testified, and on the basis of such testimony the Commission finds, that none of respondent Lane's preparations will either cure hay fever or alleviate the symptoms thereof.

PAR. 8. The Commission further finds that, contrary to representations made in the respondents' advertisements, three of respondent Lane's preparations are not in all cases safe or harmless. The preparations designated "Special Tablets" and "Nasal Ointment" each contain the drug ephedrine, which, while not considered a poisonous drug, does produce toxic symptoms of poisoning when given in overdoses. When given in customary doses the drug ephedrine stimulates the nervous system and raises the blood pressure. It must be prescribed with caution in cases of allergic asthma, and elderly persons with a suspicion of hardening of the arteries or high blood pressure, and individuals with chronic kidney trouble, should not take ephedrine at all. In addition to ephedrine, the preparation "Nasal Ointment" also contains the drug benzocaine, which has an effect similar to cocaine or novocain in producing local anesthesia.

Because of its potassium iodide content the preparation "D. J. Lane's Treatment" is likely to be harmful to those having goitre or tuberculosis in either the active or the arrested stage. In cases of goitre the tendency of potassium iodide is to convert a benign adenoma into a toxic adenoma. In cases of arrested tuberculosis the tendency of the drug is to dissolve the fibrous tissues about the healed lesions and thereby reactivate the tubercular process, and in the case of active tuberculosis potassium iodide tends to prevent or retard the healing process.

PAR. 9. The Commission finds, therefore, that the representations made by the respondents with respect to the preparations "D. J. Lane's

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Treatment," "D. J. Lane's Special Elixir," "Special Tablets," and "Nasal Ointment," as set forth in paragraphs 3 and 4 hereof are false, erroneous, and misleading, and constitute false advertisements.

PAR. 10. The complaint herein charged also that the respondents' advertisements concerning the preparations "D. J. Lane's Treatment," "Special Tablets," and "Nasal Ointment" constitute false advertisements for the further reason that they fail to affirmatively reveal the facts as to the potential dangers of said preparations because of their potassium iodide and ephedrine contents. While these preparations are not safe and harmless for all individuals, as the Commission has found, the Commission is not in a position to determine on the basis of the information presently before it that the potential dangers of said preparations are of sufficient seriousness to justify a requirement that the respondents make an affirmative disclosure of all the facts in their advertisements.

PAR. 11. The use by the respondents of the false advertisements herein referred to has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparations possess therapeutic values which they do not in fact possess and into the erroneous and mistaken belief that said preparations are in all cases safe and harmless when such is not the fact. As a result of the erroneous and mistaken belief so engendered a substantial portion of the public has purchased large quantities of these preparations.

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, the joint answer of respondents, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner and exceptions thereto filed by counsel in support of the complaint, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclu-

sion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Lewman A. Lane, individually, and trading as D. J. Lane Co., or trading under any other name, and the respondent, Frank E. Whalen, an individual, 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 designated "D. J. Lane's Treatment," "D. J. Lane's Special Elixir," "Special Tablets," and "Nasal Ointment," or any preparations of substantially similar compositions 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 said preparations, either separately or in combination, constitute cures or remedies for asthma or hay fever; or that said preparations possess any therapeutic value in the treatment of asthma or hay fever except insofar as they may afford temporary relief from the paroxysms of asthma.

(b) That there is a distinction between "uncomplicated" asthma and "bronchial" asthma; or that it is possible for a lay individual suffering from an asthmatic condition to determine from his symptoms or otherwise which of respondents' preparations is indicated.

(c) That asthma is a derangement of the nervous system which affects the bronchial tubes.

(d) That the preparations designated "D. J. Lane's Treatment," "Special Tablets," and "Nasal Ointment," or any similar preparations containing comparable quantities of potassium iodide or ephedrine, are safe or harmless for all individuals.

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 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.

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.

IN THE MATTER OF
SUPERIOR PRODUCTS CO., DOING BUSINESS AS
S-P LABORATORIES

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

Docket 5188. Complaint, July 14, 1944—Decision, Mar. 4, 1948

Where a corporation engaged in the interstate sale and distribution of cosmetics, drugs, sundries, and household supplies, including its "Trio 3-Purpose Cream," to jobbers and dealers—

Falsely represented through display of said designation, followed by the words "Cold," "Cleansing," and "Texture," or by the words "Cold-Cleansing-Tissue," directly and by implication, that its said preparation nourished the tissues of the skin and improved its texture;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby into the purchase of substantial quantities of said product; and with effect, through distribution of said advertising matter in the form of catalogs or price lists, of placing in the hands of dealers and distributors means for deceiving purchasers as to the results to be obtained from use of said preparation:

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.

In said proceeding in which the Commission charged respondents, among other things, with false advertising with respect to a "bleach cream" offered by it, in that it failed to reveal facts which were material in the light of the representations made in its said advertisements, and with respect to consequences which might result from the use of the preparation under prescribed or customary conditions due to the fact that it contained about 5 percent of ammoniated mercury and should not be applied to an area larger than the face and neck at any one time; that too frequent use and use over excessive periods should be avoided; that adequate rest periods between treatments should be observed; that it should not be used where the skin is cut or broken; and that a proper patch test should be made in all cases to determine whether the patient is allergic or sensitive thereto:

The Commission made no findings with respect to said charges since it had recently administratively determined that when such a preparation does not contain in excess of 5 percent of ammoniated mercury, it will not seek to require the disclosure in advertising of dangers which may result from the use of such preparation, unless scientific information becomes more specific as to substantial injury therefrom.¹

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Thomas G. Murnane, of Dallas, Tex., for respondent.

¹ Statement released as of Sept. 2, 1947.