

Syllabus

IN THE MATTER OF

AMERICAN DIETETIC CO., INC., JOSEPH G. SPITZER AND
MARVIN SMALL

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

Docket 5070. Complaint, Oct. 28, 1943—Decision, Mar. 19, 1948

A categorical representation by the advertiser-seller of a product that certain designated symptoms or conditions were likely to be due to a cause for which said advertiser-seller's product was beneficial, when in fact in the majority of cases such symptoms or conditions are due to causes in the treatment of which the product advertised would have no benefit whatever, is clearly false and obviously deceptive, and the Commission is of the opinion that a representation to the same effect, made under the same circumstances, except by suggestion instead of categorically, and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms and conditions, is equally false and deceptive, and, by reason of such falsity, is subject to the exercise of the Commission's corrective jurisdiction in the same manner and to the same extent as though the representation had been made by affirmative statement.

As respects the necessity for disclosure in cases in which an advertiser-seller through suggestion represents that certain symptoms or conditions not only may be due to the cause for which the advertiser-seller's product is beneficial, but also that there is likelihood that they are in fact due to such cause, when in the majority of cases the symptoms or conditions are due to causes in the treatment of which the product advertised would have no benefit whatsoever, the Commission is of the opinion that, as respects the necessity for disclosure in such cases, there is sound reason for distinguishing between those cases in which products are recommended for the cure or treatment of symptoms or conditions, and those in which it is represented merely as an effective preventive thereof, since, in the case of the former, the advertisement is directed to persons who are already ill or so consider themselves, and usually have or are under the impression that they have one or more of the symptoms referred to in the advertisement; whereas, in the case of the latter; i. e., where the product is represented only as a preventive, the advertisement is directed presumably to those who are well and who would not have, or think they have, any of the symptoms mentioned, and are in a better position properly to appraise the representation, and will not be so easily misled as those who are already ill.

The skin, as respects special preparations claimed to produce a clear, youthful complexion, or otherwise improve the appearance thereof, is affected by the processes of aging, and consequent effects thereon will not be averted or postponed by their use. Said appearance is dependent upon many factors of which the fundamental are the inherent qualities of the skin and the physiological processes of the body, and if said factors are not such as to supply the essential foundation for a clear or youthful complexion, one

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cannot be acquired by the use of soap and water. And as respects the external application of face cream to keep the skin free from blackheads, enlarged pores or other skin blemishes, or to prevent muddy complexion, lifeless skin or premature wrinkles, such and similar skin blemishes are often brought about by factors and bodily conditions which cannot be thus affected.

In a proceeding in which the Commission challenged as false and misleading various advertising representations of respondent advertiser-sellers, with respect to certain medicinal preparations offered by them, and in which it appeared that nine vitamins, and as many minerals, were constituents of one or more of the products involved, the Commission, on the basis of the facts generally accepted by qualified experts with respect to the requirements in human nutrition of the said vitamins and minerals,

(a) Found and set forth the minimum daily adult requirements for certain of said vitamins and minerals, and for nutritional as distinguished from therapeutic purposes (and as designated as such for the purposes of the regulation promulgated pursuant to section 403 (j) of the Federal Food, Drug, and Cosmetic Act), with respect to vitamins A, B₁, C, D, B₂ (G), calcium, phosphorus, iron, and iodine;

(b) Found that the need in human nutrition for niacin (nicotinic acid), vitamin K, copper, magnesium, and zinc had been established, but that their minimum daily requirements had not been established.

(c) Found that the need in human nutrition for vitamin B₆, vitamin E, calcium pantothenate, manganese, and cobalt had not been established.

Where a corporation engaged in the interstate sale and distribution of various medicinal and cosmetic preparations, and the two individuals, who were its president, and secretary and treasurer, and owned and operated it; in advertising said preparations through the mails and in various other ways, directly and by implication—

(a) Falsely represented that the preparation "Enrich" was a cure and competent treatment for periodic pains of menstruation, acne, common diseases of the heart, stomach ulcers, colitis, lowered sex interest, arthritis, and neuritis; that it would build red blood and strong nerves; strengthen every tissue of the body and help the organs to function properly and definitely increase hemoglobin of the blood and the red blood cell count; and was a competent and effective treatment for nerve diseases which would recharge the energy system, make one healthy and robust, eat better, sleep better, and feel better, and enable one to work with vigor, think more clearly, and lead a happier, richer social life; that the form of iron contained in said preparation was superior to that contained in Bland pills and other medicinal preparations; and that the iron in said other preparations had to be converted before it could be assimilated, whereas that in its own product was in the same form as iron in the body and, therefore, was assimilated immediately; and through the use of such words and phrases, among many others, as "low vitality," "nerve disorders," "lowered sex interest," "morbid fears," "morning lassitude," "flushing face," "excessive yawning," "nausea," "heaviness of limb," "shortness of breath," "loss of appetite," "restless sleep," that such symptoms, manifestations, or conditions indicated lack of iron or

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vitamin B₁ in the diet, and was caused thereby; and that its said "Enrich" preparation constituted a remedy or effective treatment therefor;

The facts being that (1) the only constituents of said liquid tonic which had any relation to the aforesaid representations and symptoms were iron and vitamin B₁; that, when taken as directed, said "Enrich" supplied the generally recognized minimum therapeutic dose of iron, and about 6 percent of that of vitamin B₁; (2) symptoms included in its above enumeration are not symptoms of either iron or vitamin B₁ deficiencies; (3) while a variety of conditions listed are all symptoms of iron deficiency anemia, they are also symptoms of other more frequent ailments or diseases which are unrelated thereto, and in such cases said product had no therapeutic value;

(b) Falsely represented that their "Stamina" powdered food product would endow the individual with increased capacity for physical exertion, increase his stamina and virility, reduce excess fat, keep him young and furnish significant amounts of essential vitamins and minerals; that its use was of significant value as a dietary adjunct for sufferers from weak stomach, colitis, nephritis, or for kidney disorders, chronic gastrointestinal, and gall bladder diseases, general weakness, and low vitality, and provided a competent treatment therefor; would correct insomnia, restless sleep, mental distress, morbid fears, lack of confidence, insufficient energy, sensitiveness to noise and light, inability to concentrate, nervous indigestion, headache, nausea, and some other conditions; and was an adequate treatment for nervous break-downs, would promote vitality, benefit the nerves, improve digestion and make an individual mentally alert and physically fit;

The facts being that said "Stamina" provided vitamin A, B₁, B₂ (G), phosphorus, and calcium, but not in quantities which were generally recognized as therapeutic; and consisted of about 75 percent carbohydrates, and, consumed as a dietary supplement in the recommended quantities would not increase stamina or capacity for physical exertion beyond the aid it would give by reason of its food energy component; and would not reduce but would tend to increase body fat;

(c) Falsely represented that their "Ritamine" capsules, taken as directed, would supply all vitamins and minerals in amounts required by the body to maintain perfect health, and that thus used it would prevent or remedy all diseases or abnormal bodily conditions caused by vitamin and mineral deficiencies and would cure or effectively prevent colds, sinus infection, joint pains, or unsatisfactory functioning of the glands, and increased resistance to the rigors of winter and to diseases generally; was a cure or remedy for heart trouble, low vitality, poor teeth, scaly skin, tooth decay, soft gums, lack of appetite, loss of muscle tone, general weakened condition of the body, or diseases arising by reason of old age; that vitamin A provided resistance to colds, sinus troubles or infection of the respiratory tract, that vitamin E prevented sterility, and that vitamin G improved digestion; and that said "Ritamine" product would prevent low vitality, poor teeth, tooth decay, scaly skin, soft gums, lack of appetite, loss of muscle tone, a general weakened condition, heart diseases or impairment of heart action, neuritis, capillary weakness, and unhealthy skin or nervous irritability;

The facts being that said "Ritamine" would not supply the respective vitamins and minerals in therapeutic quantities; though, after a change in formula, it supplied all vitamins known to be essential and for which daily minimum requirements had been established, in amounts equal to or exceeding the same; supplied all the essential minerals and the minimum daily requirements of iron and iodine, but not such requirements of calcium and phosphorus; and while the ailments listed above might result from vitamin deficiencies, they frequently were the results of other causes; and while, used as directed, their said product would prevent the symptoms when due to vitamin deficiencies, they would not prevent their development from other causes;

- (d) Falsely represented that their powdered food supplement "Joyana," taken as directed, would provide the minimum daily requirements of all the essential vitamins and minerals; was a cure or effective treatment for stomach distress; would reduce excess weight; prevent or correct baldness, dandruff or gray hair; aid digestion; renew energy and increase strength; correct low vitality, chronic fatigue, headaches, instability, nervousness, vague aches and pains, and insomnia; and prevent insomnia, lack of energy or strength, low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches or pains;

The facts being that said "Joyana," used as directed, would prevent development of vitamin deficiencies of which the ailments listed above are symptoms, but would not prevent such symptoms where due to other causes;

- (e) Falsely represented that their "Souplets" tablets had significant value in the reduction of excess weight and would produce healthy nerves and good digestion;

The facts being that the product in question supplied about one-third of the minimum daily requirements of thiamine or vitamin B₁, and not sufficient to have any significant effect on nerves and digestion; that, however, as part of a low caloric diet it served as a good source of vitamin B₁; that, while soup or broth prepared therefrom was of a comparatively low caloric value, and, therefore, helpful in a reducing diet, it did not have any other effect in the reduction of excess weight;

- (f) Represented that their "Nyce Special Soap" tended to produce a clear, youthful complexion and contained soya extract, which beautifies the skin;

The facts being that the only beneficial effects upon the skin, by reason of the use thereof, were such as may result from cleansing the skin with soap and water; and the soyabean oil in said product had been saponified and would not benefit the skin;

- (g) Falsely represented that their "Nyce Cream" penetrated the pores, softened and loosened the accumulation of wax, dust and grime, and floated them to the surface of the skin; cleared the pores so they could breathe; reduced enlarged pores to normal, kept the skin free from blackheads, enlarged pores, and other skin blemishes, and prevented muddy complexion, lifeless skin, and premature wrinkles;

- (h) Falsely represented that their "Sorbex" tablets acted as a detoxifier, absorbed putrefactive toxins which might be present in the colon or small intestine and brought about the elimination thereof from the body; that it had

antiseptic properties; and that it acted as a digestant in the stomach and prevented gastric and duodenal ulcers, and was an adequate and competent treatment for them and for peptic ulcers, colitis, diarrhea, dysentery, enteritis, cholera infantum, paratyphoid, typhoid, and food poisoning, arthritis and rheumatism;

- (i) Falsely represented that their "Vitalets" would furnish significant quantities of vitamins A, B, D, and B₂ (G); would be of value in the treatment of acne, pimples, blemishes, eczema, and hives, and would alleviate skin troubles generally; would endow an individual with increased capacity for physical exertion; and would protect the eyes, ears, nose, and sinuses;
- (j) Represented that their preparation "Tam" did not contain any of the ordinary laxative drugs, but owed its laxative effect to leaves and fruits identical to various leaves and fruits used as food; that it was a new laxative, relieved constipation in a new way and acted through natural means; and that use thereof benefited the intestinal muscles, restored rhythm to the inner muscles, produced healthy bowel tone, gave pep to intestinal muscles, corrected and relieved piles, increased the appetite and aided digestion;

The facts being that said laxative preparation, which resembled a fruit jam, contained significant quantities of the cathartic drugs senna, cassia fistula, and tamerind, which are commonly used in laxative preparations, and while they are natural cathartic leaves and fruits, do not resemble leaves and fruits used as food; while the palatableness of "Tam" was unique and original, its combination of cathartic drugs with fruits could not be regarded as new, but was one of the oldest types of laxative preparation; it did not act on any new principle or through natural means, and its only therapeutic value was in temporarily relieving constipation and symptoms thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products, and thereby induce it to purchase substantial quantities thereof:

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

In said proceeding, in which the complaint also charged that respondents' advertisements of their laxative preparation "Tam" constituted false advertisements for the further reason that they failed to reveal certain facts as to potential danger in the use thereof, the Commission was of the opinion that under the circumstances in the case, no disclosure as to such facts should be required in the advertisements.

Before *Mr. George Biddle*, trial examiner.

Mr. Clark Nichols for the Commission.

Breed, Abbott & Morgan, of New York City, and *Mr. Michael F. Markel*, of Washington, D. C., for respondents.

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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 American Dietaids Co., Inc., a corporation, and Joseph G. Spitzer and Marvin Small, individually and as officers of American Dietaids 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Dietaids Co., Inc., is a corporation existing under the laws of the State of New York, with its principal office and place of business located at 176 South Broadway, Yonkers, New York.

Respondents, Joseph G. Spitzer and Marvin Small, are president and secretary and treasurer, respectively, of American Dietaids Co., Inc., with their principal office and place of business located at 176 South Broadway, Yonkers, N. Y. Said individual respondents own, control, and operate the respondent corporation, American Dietaids Co., Inc., and jointly and severally acting in their individual and official capacities and for their own interests, determine, direct, and administer the business policies and sales activities and are personally and actively engaged in controlling, conducting, and operating the business and sales activities of said respondent corporations.

PAR. 2. Respondents, American Dietaids Co., Inc., and Joseph G. Spitzer and Marvin Small, individually and as officers of the aforesaid respondent corporation, are now, and for more than 1 year last past have been, engaged in the sale and distribution of various preparations in commerce among and between the various States of the United States and in the District of Columbia. Among the preparations so sold and distributed by these respondents are the preparations designated and advertised as "Enrich," "Stamina," "Souplets," "Nyce Special Soap," "Nyce Cream," "Ritamine," "Joyana," "Sorbex," "Vitalets," and "Tam."

Respondents cause said preparations when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents at all times mentioned herein maintain, and have maintained, a course of trade in said preparations in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, respondent corporation and Joseph G. Spitzer and Marvin Small, individually, and in their official capacities as officers of the aforesaid corporation, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their aforesaid preparations by the United States mails and by various others means in commerce as "commerce" is defined in the Federal Trade Commission Act; and the respondents, as aforesaid, have also disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning their aforesaid preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the words, phrases, statements, representations, and pictures appearing in the advertising material disseminated and caused to be disseminated by respondents as aforesaid, which purport to be descriptive of the preparation "Enrich," its therapeutic and nutritional value, respondents represent, directly and by implication, that the preparation "Enrich" is a cure and remedy for and constitutes a competent and effective treatment for periodic pains of menstruation, acne, common diseases of the heart, stomach ulcers, lowered sex interest, arthritis, neuritis, and colitis; that it will build red blood and strong nerves; that it will strengthen every tissue of the body and help the organs to function properly; that it will definitely increase the hemoglobin of the blood; that it will definitely increase the red blood cell count; that it is a competent and effective treatment for nerve diseases; that it will recharge the energy system, make one healthy and robust, eat better, sleep better, and feel better, enable one to work with vigor, think more clearly and lead a happier, richer social life.

PAR. 5. Through the use of the words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of the form of iron contained in the preparation "Enrich" and a comparison thereof with the form of iron contained in Blaud Pills and other medical preparations, respondents represent directly and by implication, among other things, that the preparation "Enrich" is superior to Blaud Pills and other medical

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preparations containing iron; that the iron in Blaud Pills and in other medical preparations containing iron, has to be converted before it can be assimilated by the body; and that the iron contained in the preparation "Enrich" is in identically the same form as the iron in the human body and therefore is immediately assimilated by the body without having to be converted.

PAR. 6. Through the use of the words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of various physical and mental conditions, respondents represent directly and by implication that, if an individual suffers from low vitality, nerve disorders, lowered sex interest, morbid fears, morning lassitude, fear of calamity, constant worry, flushing face, excessive yawning, nausea, heaviness of limb, vague shooting pains, chronic drowsiness, heavy eyes, shortness of breath, loss of appetite, a run-down condition, restless sleep, acid indigestion, or functional disorders of the glands, nervous indigestion, neuritis, stomach ulcers, colitis, anorexia, anemia, arthritis, headaches, cold hands and feet, irregular pulse, tender, tense scalp, twitching muscles, ringing in the ears, sweating palms, spells of faintness, palpitation, pale cheeks and lips, frequent periods of ill health, poor digestion, frayed and jumpy nerves, swollen ankles, upset stomach, or gas pains; or is nervous, constipated, confused, mentally depressed, unduly jealous, often embarrassed, always undecided, upset by loss of sleep, peevish, annoyed by noise, sensitive to light, or grouchy; or lacks confidence, zest, energy, or vigor; or cannot concentrate or sleep; or feels older than he is, or tired; or has menstruation difficulties or is frigid, then such person is exhibiting symptoms, manifestations, or conditions indicating lack of iron or lack of vitamin B₁ in the diet; that lack of iron or lack of vitamin B₁ in the diet is the cause of such symptoms, manifestations or conditions, and that the preparation "Enrich" is a cure or remedy, or constitutes a competent or effective treatment for such symptoms, manifestations or conditions.

PAR. 7. The foregoing representations and others of similar import and nature, not specifically set out herein with reference to the preparation "Enrich" appearing in respondents' advertising material disseminated and caused to be disseminated, as aforesaid, are grossly exaggerated, false, and misleading.

The preparation "Enrich" is not a cure or remedy, or a competent or effective treatment for the periodic pains of menstruation, acne, or any form of heart disease, stomach ulcers, colitis, lowered sex interest, arthritis, neuritis, colitis, or nerve diseases. It will not recharge the

energy system. It will not make one healthy or robust. It will not cause one to eat better, sleep better, or feel better. It will not enable one to work with vigor, think more clearly or lead a happier, richer social life.

The preparation "Enrich" possesses some therapeutic value in the treatment of uncomplicated iron deficiency anemia, but it cannot be depended upon to build red blood or to increase the hemoglobin of the blood or to increase the red blood cell count. It will not build strong nerves. It will not strengthen every tissue of the body. It will not help the organs to function properly.

The iron content of "Enrich" is not superior to the iron content of Bland Pills or of other medical preparations containing the same proportion of iron. The iron in the preparation "Enrich" is not in identically the same form as the iron in the human body and is not immediately assimilated but has to be converted before it can be assimilated by the body. Practically all of the mental and physical symptoms, disorders and conditions mentioned in respondents' advertising as set out in paragraph 6 hereof are symptoms or manifestations of a wide variety of different disease conditions, both acute and chronic, which bear no relationship whatever to vitamin B₁ or iron deficiency and cannot be adequately treated by the preparation "Enrich." Although it may have a limited value in simple iron deficiency anemia, it would not be an adequate treatment for numerous other types of anemia.

PAR. 8. Through the use of the words, phrases, representations, and pictures appearing in the advertising material disseminated and caused to be disseminated by respondents as aforesaid, which purport to be descriptive of the preparation "Stamina," respondents represent, directly and by implication, that "Stamina" will endow the individual with increased capacity for physical exertion, increase his stamina and virility, reduce excess fat, keep one young and furnish significant amounts of the essential vitamins and minerals; that its use is of significant value as a dietary adjunct for sufferers from weak stomach, colitis, nephritis, or other kidney diseases, chronic gastrointestinal and gall bladder diseases, general weakness and low vitality and that the use of said product provides a competent and adequate treatment for said conditions or diseases; that the use of said preparation will correct insomnia or restless sleep, mental distress, depression, morbid fears, and phobias, indecision, embarrassment, a sense of impending calamity, lack of confidence, insufficient energy, peevishness, worry, sensitiveness to noise and light, inability to concentrate, nervous indigestion, headache, flushing of the face,

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excessive yawning, nausea, heaviness of the limbs, cold hands and feet, irregular pulse, and tender scalp and that it is an adequate treatment for nervous break-downs and that its use will be effective in promoting vitality, benefiting the nerves, improving digestion and making an individual mentally alert and physically fit.

The aforesaid representations and others of similar import and nature not specifically set out herein are grossly exaggerated, false, and misleading. In truth and in fact, "Stamina" is essentially a mixture of various carbohydrate foods, and the amounts of proteins, fat, vitamins, and minerals provided by it are insignificant and will not increase stamina or capacity for physical exertion. It will not bring about a reduction of excess fat but will tend to increase rather than decrease body weight. It does not furnish significant amounts of any of the essential vitamins or minerals and will have no effect upon the digestion of other foods. It will have no influence upon virility nor will it enable an individual to keep young. It will have no significant value as a dietary adjunct for sufferers from weak stomach, colitis, nephritis, or other kidney diseases, chronic gastrointestinal and gall bladder diseases, general weakness or low vitality, or constitute a competent treatment for such diseases and conditions. It cannot be depended upon to correct cases of insomnia or restless sleep, mental distress, depression, morbid fears, and phobias, indecision, embarrassment, a sense of impending calamity, lack of confidence, insufficient energy, peevishness, worry, sensitiveness to noise and light, inability to concentrate, nervous indigestion, headache, flushing of the face, excessive yawning, nausea, heaviness of the limbs, cold hands and feet, irregular pulse, tender scalp, and nervous breakdown. It would not be effective in promoting vitality, benefiting the nerves, improving digestion or making the individual mentally alert and physically fit.

PAR. 9. Through the use of the statements and representations disseminated by the respondents which purport to be descriptive of the preparation "Souplets," respondents represent, directly or by implication, that it has a significant value in the reduction of excess weight and will produce healthy nerves and good digestion.

"Souplets" may form a satisfactory addition to a reducing diet due to its low caloric value, but it does not have any specific effect in the reduction of excess weight, or make it easier to adhere to a reducing diet. The vitamin B₁ contained in "Souplets" cannot be depended upon to produce healthy nerves and good digestion.

PAR. 10. Through the use of the statements and representations disseminated by respondents, which purport to be descriptive of the

products "Nyce Special Soap" and "Nyce Cream" and their therapeutic values and usefulness, respondents represent, directly and by implication that their "Nyce Special Soap" tends to produce a clear, youthful complexion and contains soy extract which beautifies the skin. That their "Nyce Cream" penetrates the pores of the skin softens and loosens the accumulation of wax, dust, and grime and floats them to the skin surface; that it clears the pores so they can breathe; that its use is effective in reducing enlarged pores to normal; that it keeps the skin free from blackheads, enlarged pores, and other skin blemishes and prevents muddy complexion, lifeless skin, and premature wrinkles.

The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact respondents "Nyce Special Soap" cannot be depended upon to produce a clear, youthful complexion or otherwise to significantly improve the appearance of the skin. It will not make the skin youthful looking. The skin is affected by age and the consequences of advancing age will not be averted or postponed by the use of this product. The appearance of the skin is dependent upon many factors of which the fundamentals are its inherent qualities and the physiological processes of the human body. If these factors are not such as to supply the essential foundation for a clear or youthful complexion one cannot be acquired by the use of soap and water. The soy extract in this product cannot beautify the skin. The only beneficial effect upon the skin afforded by the use of this product is such cleansing as it may impart.

Respondent's product "Nyce Cream" does not penetrate the pores beyond the pore openings and cannot soften and loosen accumulations of wax, dirt, dust, and grime that may be below the pore openings and in no event could it float such accumulations out of the pores and to the skin surface. The pores of the skin do not breathe in the common and accepted sense. The use of this product will have no significant effect upon the size of the pores. It cannot be depended upon to keep the skin free from blackheads, enlarged pores, or other skin blemishes, nor can it be depended upon to prevent muddy complexion, lifeless skin or premature wrinkles. These conditions are usually brought about by factors and bodily conditions which cannot be affected by the external application of a face cream. This preparation because of its emollient properties would tend to make lines and wrinkles in the skin less evident when caused solely by excessive dryness of the skin.

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PAR. 11. Through the use of the statements and representations disseminated by the respondent with respect to their preparation "Ritamine," respondents represent, directly and by implication, that said preparation contains 6 vitamins and 10 minerals and when taken as directed will supply all vitamins and minerals in amounts required by the body to maintain perfect health; that the use of said preparation will prevent or remedy all diseases or abnormal bodily conditions caused by vitamin and mineral deficiencies and especially colds, sinus infection, low vitality, heart trouble, poor teeth, scaly skin, joint pains, unsatisfactory functioning of the glands, tooth decay, soft gums, lack of appetite, loss of muscle tone, and a general weakened condition; that it is particularly valuable for diseases and bodily conditions arising by reason of old age and that its use increases resistance to the rigors of winter and to disease, generally; that vitamin A provides resistance to colds, sinus trouble, and infections of the respiratory tract; that vitamin B prevents neuritis, other nerve diseases; and heart disease; that vitamin C prevents bleeding gums and weakness of blood capillaries; that vitamin D prevents heart disease and defective teeth and bones; that vitamin E prevents sterility; that vitamin G prevents unhealthy skin, nervous irritability, and improves digestion; that said preparation contains sufficient amounts of calcium and phosphorus to supply deficiencies of these minerals in the body.

The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact, while this preparation contains 6 vitamins and 10 minerals, it will not, when taken as directed supply all the necessary amounts of vitamins and minerals to the body. Said preparation has no significant value in preventing or treating colds, sinus infections, low vitality, heart trouble, poor teeth, scaly skin, joint pains, unsatisfactory functioning of the glands, tooth decay, soft gums, lack of appetite, loss of muscle tone, and general weakened condition of the body nor will it significantly increase resistance to the rigors of winter or to disease generally. This preparation is of no particular value for diseases arising by reason of old age. The administration of vitamin A does not provide resistance to colds, sinus trouble, or to infections of the respiratory tract. While severe vitamin B deficiency may cause a certain nerve disease and heart condition, there are numerous forms of neuritis and nerve diseases and heart disease which bear no relationship to vitamin B deficiency and cannot be adequately treated by the administration of this vitamin. While bleeding gums and capillary weakness may be caused by a deficiency of vitamin C, there are numerous other causes for these

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conditions which are not related to vitamin C deficiency and cannot be adequately treated by the administration of this vitamin. Vitamin D exerts no significant effect upon the teeth and bones in the case of adults. While severe deficiency of vitamin D may result in some impairment of the heart action, there are many other abnormalities of the heart which bear no relationship to vitamin D deficiency and cannot be adequately treated by the administration of this vitamin. Vitamin E does not prevent sterility. There are many causes of unhealthy skin and nervous irritability other than vitamin G deficiency. This vitamin will not improve the digestive processes in any significant degree. Such conditions as neuritis and other diseases of the nerves, heart disease, bleeding gums, and capillary weakness, diseased and abnormal conditions of the teeth and bones, skin disease, and nervous irritability, when resulting from vitamin deficiency are manifestations of severe vitamin deficiencies and cannot be appreciably benefited by the use of this product. The minimum daily requirements of the human body has not been determined for many of the minerals contained in this product. Among those that have been determined are calcium and phosphorus. This product contains far less than the required amount of these minerals.

PAR. 12. Through the use of the statements and representations disseminated by the respondents in the advertisement of their preparation "Joyana," respondents represent and imply that said product, when taken as directed, will provide the minimum requirement of all the various vitamins and essential minerals; that it will prevent insomnia, renew energy and increase strength, be of value in the treatment of stomach distress, stomach ulcers, high blood pressure, arthritis, sinus trouble, and anemia, reduce excess weight, prevent or correct baldness, dandruff, and gray hair, correct low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches and pains, and assist in the digestion of other foods.

The aforesaid representations disseminated by respondents are grossly exaggerated, false, and misleading. In truth and in fact, "Joyana" will not provide the minimum requirement of all the various vitamins and essential minerals, will not prevent or cure insomnia, renew energy, increase strength, be of value in the treatment of stomach distress, stomach ulcers, high blood pressure, arthritis, sinus trouble, anemia, will not reduce excess weight, prevent or correct baldness, dandruff, and gray hair, will not correct low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches and pains, or assist in the digestion of other foods.

PAR. 13. Through the use of the statements and representations disseminated by the respondents with respect to their preparation "Sorbex," respondents represent, directly or by implication that said product prevents putrefaction, acts as a detoxifier, adsorbs putrefactive toxins which may be present in the colon or small intestine, and brings about the elimination of these toxins from the body; that said product has antiseptic properties; that it acts as a digestant in the stomach; that it prevents acid erosion in cases of gastric and duodenal ulcer and is an adequate and competent treatment for peptic and duodenal ulcers, colitis, diarrhea, dysentery, enteritis, cholera infectum, paratyphoid, typhoid, and food poisoning, arthritis and rheumatism.

The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact this preparation will not prevent putrefaction, act as a detoxifier or adsorb putrefactive toxins which may be present in the colon or small intestine and will have no appreciable effect in bringing about the elimination of these toxins from the body. This preparation has no anti-septic properties. It will not act as a digestant in the stomach. It cannot be relied upon to prevent acid erosion in cases of gastric and duodenal ulcer. It does not constitute an adequate or competent treatment for peptic and duodenal ulcers, colitis, diarrhea, dysentery, enteritis, cholera infectum, paratyphoid, typhoid, food poisoning, arthritis, and rheumatism.

PAR. 14. Through the use of the statements and representations disseminated by the respondents in the advertisement of their preparation "Vitalets," respondents represent and imply that said preparation will furnish adequate amounts of vitamins A, B, D, and G; that it will be of value in the treatment of acne, pimples, blemishes, eczema, and hives, and will alleviate skin troubles generally; that it will endow an individual with increased capacity for physical exertion and protect the eyes, ears, nose, and sinuses.

The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact, "Vitalets" is not a good source of vitamin G. It is not effective in alleviating skin troubles generally and will not be of value in the treatment of acne, pimples, blemishes, eczema, or hives. It will not endow an individual with an increased capacity for physical exertion, and cannot be relied upon to protect the eyes, ears, nose, and sinuses.

PAR. 15. Through the use of the statements and representations disseminated by respondents with respect to their preparation "Tam" respondents represent, directly and by implication that said preparation does not contain any of the ordinary laxative drugs but owes its laxative effect to leaves and fruits which resemble or are identical

to various leaves and fruits which are used as articles of food; that said preparation is a new laxative, relieves constipation in a new way and acts through natural means; that the use of said preparation benefits the intestinal muscles, restores rhythm to the inner muscles, produces healthful bowel tone, gives pep to intestinal muscles, and corrects or relieves piles; that the use of said product increases the appetite and aids digestion.

The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact said preparation contains significant proportions of the emodin containing cathartic drugs senna and cassa fistula as well as the cathartic drug tamarind which are in common use in laxative preparations. The laxative ingredients do not resemble leaves and fruit which are used as food. Said preparation is not a new laxative, does not act upon any new principle or through natural means. It does not benefit the intestinal muscles, restore rhythm to the inner muscles, produce healthful bowel tone, give pep to intestinal muscles, nor correct or relieve piles. Said preparation will exercise no significant effect upon digestion or the appetite. Said preparation is an ordinary laxative and its only therapeutic value is to temporarily relieve constipation and such symptoms as may arise by reason of constipation. This preparation will not serve to correct the cause of constipation nor does it constitute an adequate treatment for chronic constipation.

PAR. 16. Respondent's advertisements with respect to their preparation "Tam" constitutes false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, said preparation contains substantial amounts of the drugs senna, cassa fistula, and tamarind and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis.

PAR. 17. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations and the failure to disclose in their advertising the potential danger in the use of said preparation as herein alleged, 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 were and are true and that the preparation designated "Tam" is entirely safe and harmless and may be used

at all times without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents said preparations.

PAR. 18. 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 October 28, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, American Dietaids Co., Inc., a corporation, and Joseph G. Spitzer and Marvin Small, individually and as officers of said corporation, charging them 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 answer to the complaint, hearings were held before a trial examiner of the Commission theretofore duly designated by it, at which hearings testimony and other evidence were introduced and a stipulation of facts entered into between counsel for the Commission and counsel for respondents was likewise made a part of the record. Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint, answer, testimony and other evidence, stipulation of facts, briefs in support of and in opposition to the complaint, and oral argument (the recommended decision of the trial examiner having been waived), 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. (a) Respondent, American Dietaids Co., Inc., is a corporation existing under the laws of the State of New York, with its principal place of business located at 176 South Broadway, Yonkers, N. Y.

(b) Respondents, Joseph G. Spitzer and Marvin Small, now are, and for more than 1 year last past have been, respectively, president, and secretary and treasurer, of the respondent corporation, American Dietaids Co., Inc. They own, control and operate the respondent corporation, and jointly and severally, acting in their individual and official capacities and for their own interests, determine, direct and

administer the business policies and sales activities of the respondent corporation and are personally and actively engaged in controlling, conducting, and operating the business and sales activities of said respondent corporation.

(c) Respondent, American Diet aids Co., Inc., under the direction, supervision, and advice of the respondents, Joseph G. Spitzer and Marvin Small, is now and for more than 1 year last past, has been engaged in the sale and distribution of various preparations in commerce among and between the various States of the United States and in the District of Columbia. Among the preparations so sold and distributed by these respondents are the preparations designated and advertised as "Enrich," "Stamina," "Souplets," "Nyce Special Soap," "Nyce Cream," "Ritamine," "Joyana," "Sorbex," "Vitalets," and "Tam."

(d) Respondent, American Diet aids Co., Inc., under the direction, supervision, and advice of its said officers, causes said preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. It has, during all of the times mentioned herein, maintained, and now maintains, a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent corporation, under the direction, supervision, and advice of respondents, Joseph G. Spitzer and Marvin Small, in their capacities as officers of said corporation, has, prior to and at the issuance of the complaint herein, disseminated by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, numerous advertisements of the said preparations.

PAR. 3. (1) The following is a list of the vitamins and minerals which are constituents of one or more of the products which are the subject of the complaint herein:

Vitamins:

Vitamin A.
Vitamin B₁.
Vitamin B₂ (G).
Vitamin C.
Vitamin D.
Niacinamide.
Vitamin B₆.
Calcium pantothenate.
Vitamin E.

Minerals:

Calcium.
Copper.
Iodine.
Iron.
Magnesium.
Manganese.
Phosphorus.
Zinc.
Cobalt.

(2) The facts generally accepted by qualified experts with respect to the requirements in human nutrition of the vitamins and minerals listed are as follows:

(a) The following are generally regarded as the minimum daily adult requirements for the respective vitamins and minerals, for nutritional as distinguished from therapeutic purposes, and they have been designated as such requirements for the purposes of the regulation promulgated pursuant to section 403 (j) of the Federal Food, Drug, and Cosmetic Act:

Vitamin A	4000 U. S. P. units.
Vitamin B ₁	1 milligram (333 U. S. P. units).
Vitamin C	30 milligrams (600 U. S. P. units).
Vitamin D	400 U. S. P. units.
Vitamin B ₂ (G)	2 milligrams.
Calcium	750 milligrams.
Phosphorus	750 milligrams.
Iron	10 milligrams.
Iodine	0.1 milligram.

(b) The need in human nutrition for niacin (nicotinic acid), vitamin K, copper, magnesium, and zinc has been established, but their minimum daily requirements have not been established.

(c) The need in human nutrition for vitamin B₆, vitamin E, calcium pantothenate, manganese, and cobalt has not been established.

PAR. 4. (a) The respondents, through the use of the advertising, disseminated as aforesaid, which purports to be descriptive of the preparation "Enrich," its therapeutic and nutritional value, have represented, directly and by implication, that the preparation "Enrich" is a cure and remedy, and constitutes a competent and effective treatment, for periodic pains of menstruation, acne, common diseases of the heart, stomach ulcers, colitis, lowered sex interest, arthritis, and neuritis; that it will build red blood and strong nerves; strengthen every tissue of the body and help the organs to function properly and definitely increase hemoglobin of the blood and definitely increase the red blood cell count and is a competent and effective treatment for nerve diseases and will recharge the energy system, make one healthy and robust, eat better, sleep better, and feel better, enable one to work with vigor, think more clearly and lead a happier, richer social life.

(b) Through the use of the words, phrases, statements, and representations appearing in said advertising material so disseminated, which purport to be descriptive of the form of iron contained in the preparation "Enrich" and comparison thereof with the form of iron contained in Blaud Pills and other medical preparations, respondents represent, directly and by implication, that the preparation "Enrich"

is superior to Blaud Pills and other medical preparations containing iron and that the iron in Blaud Pills and in other medical preparations containing iron has to be converted before it can be assimilated by the body; that the iron contained in the preparation "Enrich" is in identically the same form as the iron in the human body and therefore is immediately assimilated by the body without having to be converted.

(c) Through the use of the words, phrases, statements, and representations appearing in said advertising, so disseminated, which purport to be descriptive of various physical and mental conditions, respondents represent, directly and by implication, that if the individual suffers from low vitality, nerve disorders, lowered sex interest, morbid fears, morning lassitude, fear of calamity, constant worry, flushing face, excessive yawning, nausea, heaviness of limb, vague shooting pains, chronic drowsiness, heavy eyes, shortness of breath, loss of appetite, a rundown condition, restless sleep, acid indigestion, functional disorder of the glands, nervous indigestion, neuritis, stomach ulcers, colitis, anorexia, anemia, arthritis, headaches, cold hands and feet, irregular pulse, tender, tense scalp, twitching muscles, ringing in the ears, sweating palms, spells of faintness, palpitation, pale cheeks and lips, frequent periods of ill health, poor digestion, frayed and jumpy nerves, swollen ankles, upset stomach or gas pains; or is nervous, constipated, confused, mentally depressed, unduly jealous, often embarrassed, always undecided, upset by loss of sleep, peevish, annoyed by noise, sensitive to light, grouchy; or lacks confidence, zest, energy, or vigor, or cannot concentrate or sleep; or feels older than he is or tired; or has menstruation difficulties or is frigid, then such person is exhibiting symptoms, manifestations or conditions indicating lack of iron or lack of Vitamin B₁ in the diet; that lack of iron or lack of vitamin B₁ in the diet is the cause of such symptoms, manifestations or conditions, and that the preparation "Enrich" is a cure or remedy, or constitutes a competent or effective treatment for such symptoms, manifestations and conditions.

PAR. 5. (a) "Enrich" is a liquid tonic of the following composition:

Quantity per 100-gallon batch

Iron peptonized NF-----	17 pounds 3 ounces.
Sod. glycerophosphate NF-----	1 pound 15 ounces.
Calcium glycerophosphate NF-----	1 pound 14 ounces.
Manganese citrate NF-----	1 pound 14 ounces.
Thiamin-----	8.5 grams.
Riboflavin-----	1.5 grams.
Vitamin B complex syrup-----	4 pounds.
Glycerol, water, and flavor, q. s.-----	

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(b) The only constituents of those contained in the product "Enrich" which have any relation to the representations and symptoms as aforesaid are iron and vitamin B₁. When taken as directed on the label, viz. 2 teaspoons 4 times daily, "Enrich" supplies 100 milligrams of iron daily. This is ten times the quantity of the generally recognized minimum daily requirement and is equal in amount to the generally recognized minimum therapeutic dose. It also supplies 200 units of vitamin B₁. This is 60 percent of the generally recognized minimum daily requirement, and approximately 6 percent of the generally recognized effective therapeutic dose.

(c) "Enrich" is not a cure or remedy for periodic pains of menstruation, acne, common diseases of the heart, stomach ulcers, colitis, lowered sex interest, arthritis, and neuritis. It will not build strong nerves, will not strengthen every tissue of the body, nor help the organs to function properly. It is not a competent and effective treatment for nerve diseases and will not recharge the energy system, make one healthy and robust. It will not enable one to think more clearly and lead a happier, richer social life. It is not a cure for nerve disorders, lowered sex interest, morbid fears, fear of calamity, constant worry, flushing face, nausea, heaviness of limb, vague shooting pains, heavy eyes, loss of appetite, restless sleep, acid indigestion, functional disorders of the glands, nervous indigestion, neuritis, stomach ulcers, colitis, anorexia, arthritis, cold hands and feet, tender, tense scalp, twitching muscles, ringing in the ears, sweating palms, frequent periods of ill health, poor digestion, frayed and jumpy nerves, upset stomach, gas pains, nervousness, constipation, confusion, mental depression, jealousy, frequent embarrassment, indecision, loss of sleep, peevishness, annoyance by noise, sensitivity to light, grouchiness, lack of confidence and of zest, inability to concentrate or sleep, a feeling of age, menstruation difficulties or frigidity.

(d) Lowered sex interest, flushing face, heavy eyes, acid indigestion, functional disorders of the glands, nervous indigestion, stomach ulcers, colitis, arthritis, cold hands and feet, frequent periods of ill health, poor digestion, menstruation difficulties, and frigidity are not symptoms of either iron or vitamin B₁ deficiencies.

(e) Low vitality, morning lassitude, excessive yawning, chronic drowsiness, shortness of breath, a run-down condition, anemia, headaches, lack of appetite, restless sleep, irregular pulse, spells of faintness, palpitation, pale cheeks and lips, swollen ankles, lack of energy or vigor, and tiredness are all symptoms of iron deficiency anemia, but these are also symptoms of various other kinds of ailments or

diseases which, in the aggregate, occur more frequently than iron deficiency anemia and which are in no way related to it. The quantity of iron contained in the preparation "Enrich," when consumed in the recommended quantity, constitutes a therapeutic dose for the treatment of iron deficiency anemia and its symptoms, and is therefore a cure or remedy therefor, but this product has no therapeutic value when the symptoms are due to such other ailments or diseases.

"Enrich," when taken in the recommended quantity by persons suffering from iron deficiency anemia, will aid in correcting that condition by causing an increase of hemoglobin and an increase in the red blood cell count.

(f) The iron, in the form present in "Enrich," is not superior to the iron in the form present in Bland Pills or other medical preparations. The iron in the preparation "Enrich" is not present in the form which is identical with the form of the iron present in the human body, and it is not immediately assimilated as such, but has to be converted before it can be assimilated by the body.

PAR. 6. (a) Through the use of the words, phrases, representations, and pictures appearing in the advertising material disseminated as hereinbefore set forth, which purport to be descriptive of the preparation "Stamina," the respondents represent, directly and by implication, that "Stamina" will endow the individual with increased capacity for physical exertion, increase his stamina and virility, reduce excess fat, keep him young and furnish significant amounts of essential vitamins and minerals; that its use is of significant value as a dietary adjunct for sufferers from weak stomach, colitis, nephritis or for kidney disorders, chronic gastrointestinal and gall bladder diseases, general weakness and low vitality and that the use of said product provides a competent and adequate treatment for said conditions or diseases; that the use of said preparation will correct insomnia or restless sleep, mental distress, depression, morbid fears and phobias, indecision, embarrassment, a sense of impending calamity, lack of confidence, insufficient energy, peevishness, worry, sensitiveness to noise and light, inability to concentrate, nervous indigestion, headache, flushing of the face, excessive yawning, nausea, heaviness of the limbs, cold hands and feet, irregular pulse and tender scalp, and that it is an adequate treatment for nervous break-downs and that its use will be effective in promoting vitality, benefiting the nerves, improving digestion, and making an individual mentally alert and physically fit.

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(b) "Stamina" is a powdered food intended to be consumed as such or as a mixture with other foods. Prior to October 1943, this product was of the following composition (hereinafter referred to as Formula St-1):

<i>Formula—1943</i>			
	<i>Percent</i>		<i>Percent</i>
Corn syrup-----	70	Banana powder-----	5
Malt syrup-----	11	Coca-----	2.5
Soy flour-----	8	Tricolum phosphate-----	.03
Molasses-----	3	Salt-----	.02

"Stamina" of the composition of Formula St-1, when taken in the recommended quantity, viz, three heaping teaspoonfuls three times daily, provided approximately 49 U. S. P. units of vitamin A, 26 U. S. P. units of vitamin B₁, 147 micrograms of vitamin B₂ (G), 45 milligrams of phosphorus and 87 milligrams of calcium. These are not nutritionally significant amounts of any of such vitamins or minerals.

(c) "Stamina," as currently produced, is of the following composition (hereinafter referred to as Formula St-2):

	<i>Percent</i>		<i>Percent</i>
Soy flour-----	10	Malt-----	20
Cocoa-----	10	Bananas, dry-----	5
Molasses and corn syrup----	50	Dicalcium phosphate-----	3

and for each 100 pounds:

	<i>Grams</i>		<i>Grams</i>
Vitamin A (molecular distillate 200,000 I. U./gm-----	15	Riboflavin-----	1.5
Vitamin B ₁ (thiamin)-----	2	Vitamin D (400,000 I. U./gm--	2

"Stamina" of the composition of Formula St-2, when taken in the recommended quantity, viz, three heaping teaspoonfuls three times daily, supplies 50 percent of the minimum daily requirements of vitamin A, 112 percent of the minimum daily requirement of vitamin B₁, 105 percent of the minimum daily requirement of vitamin B₂ (G), 110 percent of the minimum daily requirement of vitamin D, 525 milligrams of calcium and 406 milligrams of phosphorus. These quantities of the respective vitamins and minerals are not sufficient to provide generally recognized therapeutic doses of any of the specified vitamins and minerals.

(d) About 75 percent of the bulk of the preparation "Stamina" in both formulae, consists of carbohydrates, one of the constituents recognized as being an energy producing constituent of foods.

(e) When the product "Stamina," of either composition, is consumed as a dietary supplement in the recommended quantities, viz, three heaping teaspoonsfuls three times per day it—

(1) Will not directly increase stamina or capacity for physical exertion beyond the aid it will give in maintaining stamina or staying power by reason of its food energy component.

(2) Will not bring about a reduction of excess fat, but will tend to increase rather than decrease body weight.

(3) Will not aid in the digestion of other foods.

(4) Will have no influence upon virility, nor will it enable an individual to keep young.

(5) Does not constitute a competent or effective treatment for sufferers from weak stomach, colitis, nephritis, or other kidney diseases, chronic gastrointestinal and gall bladder diseases, general weakness or low vitality.

(6) Is not a competent or effective treatment for insomnia or restless sleep, mental distress, depression, morbid fears and phobias, indecision, embarrassment, a sense of impending calamity, lack of confidence, insufficient energy, peevishness, worry, sensitiveness to noise and light, inability to concentrate, nervous indigestion, headache, flushing of the face, excessive yawning, nausea, heaviness of the limbs, cold hands and feet, irregular pulse, tender scalp, and nervous break-down.

(7) Is not effective in promoting vitality, benefiting the nerves, improving digestion, or making the individual mentally alert and physically fit.

PAR. 7. Through the use of the statements and representations disseminated by the respondents they represent, directly and by implication, that, when taken as directed, their preparation "Ritamine" will supply all vitamins and minerals in amounts required by the body to maintain perfect health; that the use of "Ritamine" as directed will prevent or remedy all diseases or abnormal bodily conditions caused by vitamin and mineral deficiencies and especially colds, sinus infection, lack of vitality, heart trouble, poor teeth, scaly skin, joint pains, unsatisfactory functioning of the glands, tooth decay, soft gums, lack of appetite, loss of muscle tone, and a general weakened condition; that it is particularly valuable for diseases and bodily conditions arising by reason of old age and that its use increases resistance to the rigors of winter and to diseases generally; that vitamin A provides resistance to colds, sinus trouble, and infections of the respiratory tract; that vitamin B prevents neuritis and other nerve diseases; heart disease; that vitamin C prevents bleeding gums and

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weakness of blood capillaries; that vitamin D prevents heart disease and defective teeth and bones; that vitamin E prevents sterility; that vitamin G prevents unhealthy skin, nervous irritability, and improves digestion; that said preparation contains sufficient amounts of calcium and phosphorus to supply deficiencies of these minerals in the body.

PAR. 8. (a) The product "Ritamine" consists of two types of capsules of black and brown colors, respectively. Consumers are directed to supplement their diet by consuming one black capsule and one brown capsule daily.

(b) At the time the Commission commenced its investigation, each black "Ritamine" capsule contained the following vitamins in the respective amounts indicated:

Vitamin A	10,000 U. S. P. units.
Vitamin B ₁	200 U. S. P. units.
Vitamin C	200 U. S. P. units.
Vitamin D	600 U. S. P. units.
Vitamin B ₂ (G)	50 Gamma (micrograms).

Each brown "Ritamine" capsule contained the following minerals in the respective amounts indicated:

Calcium	55 milligrams.
Copper	2 milligrams.
Iodine	1 milligram.
Iron	16.5 milligrams.
Magnesium	1 milligram.
Phosphorus	28.5 milligrams.
Potassium	1 milligram.
Sodium	1 milligram.
Zinc	1 milligram.
Wheat germ oil, as a source of vitamin E	1 minim.

This formula (hereinafter called Formula R-1) was used by respondent in making the "Ritamine" product up to October 1943.

(c) "Ritamine," as currently produced, is of the following formula (hereafter called R-2):

Each black "Ritamine" capsule contains the following vitamins in the respective amounts indicated:

Vitamin A	5,000 U. S. P. units.
Vitamin B ₁	1,000 U. S. P. units.
Vitamin B ₂ (G)	2,250 gamma (micrograms).
Vitamin C	750 U. S. P. units.
Vitamin D	500 U. S. P. units.
Niacinamide	12 milligrams.
Vitamin B ₆	200 micrograms.
Alphatocopherol (vitamin E)	1 milligram.
Calcium pantothenate	3,000 micrograms.

Each brown "Ritamine" capsule contains the following minerals in the respective amounts indicated:

<i>Milligrams</i>		<i>Milligrams</i>	
Calcium-----	88.2	Manganese-----	1.1
Copper-----	2.	Phosphorus-----	68.
Iodine-----	.1	Zinc-----	1.17
Iron-----	15.	Cobalt-----	.2
Magnesium-----	1.4	Wheat germ oil-----	29.

PAR. 9. (a) "Ritamine," made according to Formula R-1, and taken as directed, supplies $2\frac{1}{2}$ times the minimum daily requirement of vitamin A, approximately $\frac{2}{3}$ of the minimum daily requirement of vitamin B₁, $\frac{1}{3}$ of the minimum daily requirement of vitamin C, $1\frac{1}{2}$ times the minimum requirement of vitamin D, $\frac{1}{40}$ of the minimum daily requirement of vitamin B₂ (G), $\frac{1}{14}$ of the minimum daily requirement of calcium, 10 times the minimum daily requirement of iodine, approximately $1\frac{1}{2}$ times the minimum daily requirement of iron, and $\frac{1}{27}$ of the minimum daily requirement of phosphorus.

(b) "Ritamine," made according to Formula R-2, and taken as directed, supplies $1\frac{1}{4}$ times the minimum daily requirement of vitamins A, C, D, 3 times the minimum daily requirement of vitamin B, $1\frac{1}{8}$ times the minimum daily requirement of vitamin B₂ (G), the minimum daily requirement of iron and iodine, 11.8 percent of the minimum daily requirement of calcium and 9.1 percent of the minimum daily requirement of phosphorus.

PAR. 10. (a) "Ritamine" prepared according to Formula R-1 or Formula R-2, taken as directed, will not supply the respective vitamins and minerals in such quantities as are generally recognized as therapeutic doses.

(b) "Ritamine" prepared according to Formula R-1, when taken as directed, will supply all the vitamins and minerals known to be essential in human nutrition, but will not supply those vitamins and minerals for which minimum daily requirements have been established in quantities equal to such requirements.

(c) "Ritamine" prepared according to Formula R-2, when taken as directed, supplies all the vitamins known to be essential in human nutrition, and supplies those vitamins for which minimum daily requirements have been established in amounts equal to or exceeding such requirements.

Such "Ritamines" also supply all of the minerals known to be essential in human nutrition, and of these it supplies quantities of iron and iodine equal to or exceeding the minimum daily requirements estab-

lished for these minerals, but fails to supply the minimum daily requirements of calcium and phosphorus.

PAR. 11. (a) "Ritamine" is not a remedy or cure for the following diseases, symptoms, or conditions: Colds, sinus infection, low vitality, heart trouble, poor teeth, scaly skin, joint pains, unsatisfactory functioning of the glands, tooth decay, soft gums, lack of appetite, loss of muscle tone and general weakened condition of the body, and diseases arising by reason of old age.

(b) "Ritamine" is not an effective preventive for the following diseases, symptoms, or conditions: Colds, sinus infections, heart trouble, joint pains, unsatisfactory functioning of the glands; nor will it increase resistance to the "rigors of winter" and to "diseases generally." The administration of vitamin A does not provide resistance to colds, sinus troubles, or to infections of the respiratory tract. Vitamin E does not prevent sterility. Vitamin B₂ (G) will not improve the digestive process.

(c) Low vitality, poor teeth, tooth decay, scaly skin, soft gums, lack of appetite, loss of muscle tone, a general weakened condition, heart diseases or impairment of heart action, neuritis, capillary weakness, unhealthy skin, and nervous irritability are, among others, symptoms and conditions resulting from deficiencies of one or more of the vitamins supplied by "Ritamines," but they may also be, and frequently are, the results of causes other than such vitamin deficiencies. "Ritamine," used as directed, viz, one black and one brown capsule daily, will prevent the development of vitamin deficiencies, hence the symptoms and conditions resulting from such deficiencies, but the preparation will not prevent the development of such symptoms from causes other than vitamin deficiency.

PAR. 12. Through the use of the statements and representations disseminated by the respondents in advertisements of their preparation "Joyana," respondents represented and implied that said product, when taken as directed, will provide the minimum daily requirements of all the essential vitamins and minerals; that it will prevent insomnia, renew energy and increase strength; will be of value in the treatment of stomach distress, and anemia; will reduce excess weight; will prevent or correct baldness, dandruff, and gray hair; will correct low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches and pains; and will aid in the digestion of other foods.

PAR. 13. "Joyana" is a powdered food intended to be consumed after admixture with milk, fruit juices or vegetable juices. It is made according to the following formulae:

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(a) Prior to October 1943, its composition (hereinafter designated as Formula J-1) was:

Soy flour.....	21.3 percent.
Malt.....	17.1 percent.
Diastatic malt.....	1.8 percent.
Dextrose.....	11.6 percent.
Brown sugar.....	20.1 percent.
Sucrose.....	10.5 percent.
Cocoa.....	14.0 percent.
Defatted wheat germ.....	1.0 percent.
Rice polish.....	1.0 percent.
Vanillin, vanalin, and salt.....	q. s.
Vitamin A.....	3,000 U. S. P. units per ounce as molecular distillate of fish liver oil.
Vitamin B ₁	125 U. S. P. units per ounce as thiamin.
Vitamin B ₂	50 micrograms per ounce as riboflavin.
Vitamin C.....	200 international units per ounce as ascorbic acid.
Vitamin D.....	3,000 U. S. P. units per ounce as irradiated ergosterol in oil.

(b) Successive changes having been made in the formula from time to time, the "Joyana" currently produced is manufactured according to the following formula (hereinafter called J-2):

Dextrose.....	10 percent.
Sugar.....	44 percent.
Malted milk.....	22 percent.
Malt.....	10 percent.
Cocoa.....	10 percent.
Dicalcium phosphate.....	3.5 percent.
Flavors.....	q. s.
Sufficient vitamins so that each 1½ ounce of Joyana supplies:	
Vitamin A.....	4,000 U. S. P. units.
Vitamin B ₁	333 U. S. P. units.
Vitamin D.....	4,000 U. S. P. units.
Vitamin B ₂	1,000 micrograms.

PAR. 14. (a) "Joyana," made according to Formula J-1, consumed in the recommended amount, viz, two heaping teaspoonfuls twice daily (1½ ounces), supplies the minimum daily requirement of vitamin A, one-half the minimum daily requirement of vitamin B₁, 3 percent of the minimum daily requirement of vitamin B₂, approximately one-half the minimum daily requirement of vitamin C, the minimum daily requirement of vitamin D, 4 percent of the daily requirement of calcium,

25 percent of the daily requirement of phosphorus, and less than one-twentieth of the daily requirement of iron.

(b) "Joyana," made according to Formula J-2, taken as directed, viz, two heaping teaspoonfuls twice daily ($1\frac{1}{3}$ ounces) will provide the minimum daily requirement of vitamins A, B₁, and D, 50 percent of the minimum requirement of vitamin B₂, 50 percent of the minimum requirement of calcium, 37 percent of the minimum requirement of phosphorus, and 3 percent of the minimum daily requirement of iron.

(c) "Joyana" does not contain all of the vitamins and all of the minerals recognized as essential in human nutrition, in that formula J-2 does not contain vitamin C, and neither formula contains the minerals copper, iodine, magnesium, and zinc.

PAR. 15. (a) "Joyana," prepared according to either formula, is not a cure or treatment for stomach distress, stomach ulcers, high blood pressure, arthritis, sinus trouble, insomnia; it will not reduce excess weight, prevent or correct baldness, dandruff and gray hair; it will not correct low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches and pains; will not aid in the digestion of foods, nor renew energy or increase strength: *Provided, however,* That when mixed with warm milk, the resulting beverage will be helpful in inducing sleep.

(b) Insomnia, lack of energy and strength, low vitality, chronic fatigue, headaches, irritability, nervousness, and vague aches and pains are, among others, symptoms of deficiencies of one or more of the vitamins supplied by "Joyana," but they may also be, and frequently are, due to causes other than such vitamin deficiencies. "Joyana," used as directed, will prevent the development of deficiencies in these vitamins, hence the symptoms and conditions resulting from such deficiencies, but the preparation will not prevent the development of such symptoms from any other causes.

PAR. 16. Through the use of the statements and representations disseminated by the respondents, which purport to be descriptive of the preparation "Souplets," respondents represent, directly and by implication, that it has a significant value in the reduction of excess weight, and will produce healthy nerves and good digestion.

PAR. 17. "Souplets" are tablets designed to be dissolved in hot water to prepare a kind of vegetable soup or broth. They are of the following composition:

(a) Prior to October 1943, "Souplets" were made according to the following formula (hereinafter called S-1):

	Percent		Percent
Salt	29.3	Swiss chard	4.9
Wheat protein derivative	22.0	Carrot	2.1
Wheat protein hydrolyzate	25.2	Tomato	2.1
Barley flour	4.2	Celery leaf	4.2
Onion	3.4	Spices and vegetable flavors, q. s.	

In addition, each "Souplet" tablet contained 100 U. S. P. units of thiamin (vitamin B₁).

(b) Currently, "Souplets" are made according to the following formula (hereinafter called S-2):

	Percent		Percent
Dehydrated vegetables	35	Seasonings	64
Onion.		Salt.	
Barley flour.		Sodium glutamate.	
Swiss chard.		Hydrolyzed proteins.	
Carrot.		Spices.	
Tomato.		Excipients, q. s.	
Celery.			

In addition, each "Souplet" tablet contains 100 U. S. P. units of thiamin (vitamin B₁).

PAR. 18. (a) Soup or broth prepared from "Souplets" according to direction is of a comparatively low caloric value, and by reason of this fact is helpful in preparing menus of a low caloric value in a planned diet calculated to effect reduction in body weight by reason of a low caloric intake. However, soups or broths prepared from "Souplets" as directed do not in themselves have any effect, other than herein specified, in the reduction of excess weight, nor do they have any direct effect in causing a person to adhere more readily to a reducing diet.

(b) The quantity of vitamin B₁ supplied by a "Souplet" tablet in preparing a portion of soup or broth is approximately one-third of the minimum daily requirement of this vitamin and is not sufficient to have any significant effect on nerves and digestion. However, as part of a low calory diet it serves as a good source of vitamin B₁ for general dietary purposes.

PAR. 19. (a) Through the use of the statements and representations disseminated by respondents, they have represented directly and by implication that "Nyce Special Soap" tends to produce a clear, youthful complexion and contains soya extract, which beautifies the skin.

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PAR. 20. "Nyce Special Soap" is of the following composition:

	Percent		Percent
Soya bean oil	18	Lanolin	2
Olive oil	15	Glycerine	3
Coconut oil	6	Zinc oxide	1
Tallow	55		

together with sufficient alkaline saponifying agent to saponify the fats and oils.

PAR. 21. The only beneficial effects upon the skin by reason of the use of "Nyce Special Soap" are such benefits as may result from cleansing the skin with soap and water. It will not produce a clear, youthful complexion or otherwise improve the appearance of the skin, except to the extent that improvement in appearance may result from maintaining a cleansed skin. The skin is affected by the processes of aging, and the consequent effects upon the skin will not be averted or postponed by the use of this soap. The appearance of the skin is dependent upon many factors, of which the fundamentals are its inherent qualities and the physiological processes of the human body. If these factors are not such as to supply the essential foundation for a clear or youthful complexion, one cannot be acquired by the use of soap and water. The soya bean oil in this product is not present as such, but has been saponified, and it will not beautify the skin.

PAR. 22. Through the use of the statements and representations disseminated by respondents, they represent directly and by implication that "Nyce Cream" penetrates the pores of the skin, softens and loosens the accumulation of wax, dust, and grime and floats them to the skin surface; that it clears the pores so they can breathe; that its use is effective in reducing enlarged pores to normal; that it keeps the skin free from blackheads, enlarged pores, and other skin blemishes and prevents muddy complexion, lifeless skin and premature wrinkles.

PAR. 23. "Nyce Cream" is a brand of skin cleansing cream of the following composition:

(a) Prior to October 1943, "Nyce Cream" had the following composition:

	Percent		Percent
Soya oil	20.1	Beeswax	33.2
Almond oil	2.0	Spermaceti	16.3
Olive oil	2.0	Borax	8.1
Absorption base	18.3		

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(b) Since October 1943, "Nyce Cream" has had the following composition:

	Percent		Percent
Soya oil-----	18	Water, beeswax, boric acid, and	
Spermaceti-----	18	perfume-----	q. s.
Lanolin absorption base-----	18		

PAR. 24. "Nyce Cream" possesses emollient properties by reason of which it helps keep the skin soft, and it softens and loosens such wax, dirt, and grime collected on the skin or in the pore openings as is reached by the cream. However, it does not penetrate the pores beyond the pore openings and cannot soften and loosen accumulations of wax, dirt, dust, and grime that may be below the pore openings and in no event can it float such accumulations out of the pores to the skin surface. The pores of the skin do not breathe in the common and accepted sense. The use of this product will have no significant effect upon the size of the pores. It will not keep the skin free from blackheads, enlarged pores or other skin blemishes, nor can it prevent muddy complexion, lifeless skin or premature wrinkles. Such and similar skin blemishes are often brought about by factors and bodily conditions which cannot be affected by the external application of face cream. This preparation, because of its emollient properties, would tend to make lines and wrinkles in the skin less evident when caused solely by excessive dryness of the skin.

PAR. 25. Through the use of the statements and representations disseminated by the respondents with respect to their preparation "Sorbex," they represent directly and by implication that said product prevents putrefaction, acts as a detoxifier, absorbs putrefactive toxins which may be present in the colon or small intestines and brings about the elimination of these toxins from the body; that said product has antiseptic properties; that it acts as a digestant in the stomach; that it prevents acid erosion in case of gastric and duodenal ulcers and is an adequate and competent treatment for peptic and duodenal ulcers, colitis, diarrhea, dysentery, enteritis, cholera infantum, paratyphoid, typhoid, and food poisoning, arthritis and rheumatism.

PAR. 26. "Sorbex" consists of 7-grain tablets of the following composition:

	Percent		Percent
Magnesium trisilicate, Merck-----	71.5	Powdered dry apple-----	14.3
Powdered papain-----	7.15	Flavoring, filler, q. s.	

The directions call for the administration of two or three tablets after meals to adults.

PAR. 27. (a) "Sorbex," taken as directed, will not prevent putrefaction, act as a detoxifier or absorb putrefactive toxins which may be present in the colon or small intestine and will have no appreciable effect in bringing about the elimination of these toxins from the body. The preparation has no antiseptic properties; it will not act as a digestant in the stomach. It is not a competent treatment for peptic and duodenal ulcer, colitis, diarrhea, enteritis, cholera infantum, paratyphoid, typhoid, food poisoning, arthritis, and rheumatism.

(b) The product will neutralize excessive hydrochloric acid in the stomach for a period longer than common stomach alkalizers, such as bicarbonate of soda.

PAR. 28. Through the use of the statements and representations disseminated by the respondents in the advertisement of their preparation "Vitalets," respondents represent and imply that said preparation will furnish significant quantities of vitamins A, B₁, D, and B₂ (G); that it will be of value in the treatment of acne, pimples, blemishes, eczema and hives, and will alleviate skin troubles generally; that it will endow an individual with increased capacity for physical exertion and protect the eyes, ears, nose, and sinuses.

PAR. 29. "Vitalets" are in the form of candy bars weighing 2 ounces each, and are of the following composition:

(a) Prior to October 1943, "Vitalets" had the following composition:

	Percent		Percent
Raisins-----	44.3	Wheat germ-----	9.3
Apricots-----	11.0	Brown sugar-----	21.4
Prunes-----	6.2	Flavoring, q. s.	
Hydrogenated vegetable oil.	4.2		

Each 2-ounce bar also contained 1,500 U. S. P. units of vitamin A; 125 U. S. P. units of vitamin B₁; 300 U. S. P. units of vitamin D; and 50 micrograms of vitamin B₂.

(b) Currently produced, "Vitalets" have the following composition:

	Percent		Percent
Brown sugar-----	23	Blend of raisins, apricots,	
Wheat germ-----	12	prunes-----	60
		Hydrogenated vegetable oil, q. s.	

Each 2-ounce bar also contains 1,500 U. S. P. units of vitamin A; 125 U. S. P. units of vitamin B₁; 300 U. S. P. units of vitamin D; and 50 gamma of riboflavin (vitamin B₂).

PAR. 30. When taken as directed, viz, three daily, "Vitalets" supply the minimum daily requirements for vitamins A, B₁, and D, but supply an insignificant amount of vitamin B₂ (G).

PAR. 31. The preparation "Vitalets" is not effective in alleviating skin troubles generally and will not be of value in treatment of acne, pimples, blemishes, eczema, or hives. It will not endow an individual with increased capacity for physical exertion and will not protect the eyes, ears, nose, and sinuses.

PAR. 32. Through the use of the statements and representations disseminated by respondents relative to their preparation "Tam," they represent directly and by implication that said preparation does not contain any of the ordinary laxative drugs, but owes its laxative effect to the leaves and fruits which are in semblance of or are identical to various leaves and fruits which are used as articles of food; that said preparation is a new laxative, relieves constipation in a new way and acts through natural means; that the use of said preparation benefits the intestinal muscles, restores rhythm to the inner muscles, produces healthy bowel tone, gives pep to intestinal muscles, and corrects and relieves piles; that the use of said product increases the appetite and aids digestion.

PAR. 33. "Tam" is a laxative preparation which in appearance and consistency resembles a fruit jam, and is of the following composition:

(a) Prior to October 1943, "Tam" was made according to the following formula:

	Percent		Percent
Figs	5.65	Sodium benzoate	0.10
Prunes	6.60	Citric acid	.52
Tamarinds	6.60	Water	32.13
Cassia fistula	6.42	Sugar	34.01
Apples	.60	Senna alexandria	5.85
Dates	.60	Flavoring, q. s.	
St. John's bread	.60		

(b) Currently, "Tam" is made according to the following formula:

	Percent		Percent
Senna	6	Apples	2.6
Figs	6	Dates	2.6
Prunes	7	St. John's bread	2.6
Cassia fistula	7	Molasses, flavors, water, q. s.	
Tamarinds	7		

PAR. 34. When taken as directed, viz, one teaspoonful at night, "Tam" supplies significant quantities of the cathartic drugs senna, cassia fistula, and tamarind.

PAR. 35. The cathartic drugs senna, cassia fistula, and tamarind present in "Tam" are commonly used in laxative preparations. They are natural cathartic leaves and fruits, but do not resemble leaves and fruits which are used as food. The palatableness of "Tam" is unique

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and original. The combinations of cathartic drugs, such as senna, cassia fistula, and tamarind with fruits such as prunes, figs, and dates, cannot be regarded as new, for such combination is one of the oldest types of laxative preparation. Said preparation does not act on any new principle or through natural means. It does not benefit the intestinal muscles, restore rhythm to the inner muscles, produce healthful bowel tone, give pep to intestinal muscles, nor correct or relieve piles. Said preparation will exercise no effect upon digestion and will increase appetite only in cases where the appetite is impaired as a result of constipation. Said preparation is a laxative in which the active ingredients are cathartic drugs, and its only therapeutic value is in temporarily relieving constipation and such symptoms as may arise by reason of constipation. The preparation will not cure the cause of constipation, nor does it constitute a treatment or cure for chronic constipation.

PAR. 36. The Commission therefore finds that certain of the representations made by respondents with respect to their various products, as set forth above, are erroneous and misleading and constitute false advertisements.

PAR. 37. The Commission finds that certain of the advertisements with respect to the product "Enrich" are misleading in a material respect, and therefore false and deceptive, by reason of the innuendoes and suggestions contained therein. In these advertisements the product is represented as a cure or an effective treatment for certain designated symptoms or conditions when in fact the causes of such symptoms or conditions are numerous and the probability is that the symptoms or conditions are due to causes other than the cause which would be reached and beneficially affected by respondents' product. In representing the product as a cure or an effective treatment for certain designated symptoms or conditions, respondents suggest not only that such symptoms or conditions may be due to the cause for which the product is beneficial but also that there is likelihood that they are in fact due to such cause. If such a representation be made in a categorical statement, and if in the majority of cases the symptoms or conditions are due to causes in the treatment of which the product advertised will have no benefit whatever, the representation is clearly false and obviously deceptive. A representation to the same effect, made under the same circumstances, except by suggestion instead of categorically, and unaccompanied, as in the present case, by an appropriate disclosure of the likelihood of other causes of the symptoms or conditions, is equally false and deceptive

in the opinion of the Commission and by reason of such falsity is subject to the exercise of the Commission's corrective jurisdiction in the same manner and to the same extent as though the representation be made by affirmative statement.

The Commission is of the further opinion, however, that insofar as the necessity for disclosure is concerned, there is sound reason for distinguishing between those cases in which products are recommended for the cure or treatment of symptoms or conditions and those in which the product is represented merely as an effective preventive of symptoms or conditions. In the case of the former, the advertisement is directed to persons who are already ill or so consider themselves, and such persons usually have or are under the impression that they have one or more of the symptoms referred to in the advertisement. In the case of the latter—that is, where the product is represented only as a preventive—the advertisement is directed presumably to well persons who do not have nor think they have any of the symptoms mentioned, and such persons are in better position properly to appraise the representations and will not be so easily misled as persons who are already ill. The Commission is therefore of the view that while, as stated above, an adequate disclosure is required in the case of products recommended for the cure or treatment of already existing symptoms or conditions, it is unnecessary that such disclosure be required in the case of products recommended merely as preventives.

PAR. 38. While the complaint charged that respondents' advertisements of the preparation "Tam" constituted false advertisements for the further reason that they failed to reveal certain facts as to potential danger in the use of the preparation, the Commission is of the opinion that under the circumstances in this case no disclosure as to such facts should be required in the advertisements.

PAR. 39. The use by respondents of said false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence, a stipulation of facts, briefs in support of and in opposition to the complaint, and oral argument (the recommended decision of the trial examiner having been waived), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, American Dietaids Co., Inc., a corporation, and its officers, and Joseph G. Spitzer and Marvin Small, individually and as officers of said corporation, 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 respondents' products designated "Enrich," "Stamina," "Ritamine," "Joyana," "Souplets," "Nyce Special Soap," "Nyce Cream," "Sorbex," "Vitalets," and "Tam," or any products of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That the product "Enrich" is a cure or remedy for periodic pains of menstruation, acne, common diseases of the heart, stomach ulcers, colitis, lowered sex interest, arthritis, neuritis, nerve disorders, morbid fears, fear of calamity, constant worry, flushing face, nausea, heaviness of limb, vague shooting pains, heavy eyes, acid indigestion, functional disorders of the glands, nervous indigestion, anorexia, cold hands or feet, tender tense scalp, twitching muscles, ringing in the ears, sweating palms, frequent periods of ill health, poor digestion, frayed or jumpy nerves, upset stomach, gas pains, nervousness, constipation, confusion, mental depression, jealousy, embarrassment, indecision, peevishness, annoyance by noise, sensitivity to light, grouchiness, lack of confidence, lack of zest, inability to concentrate, a feeling of age, menstruation difficulties, or frigidity.

(b) That the product "Enrich" is a cure or remedy or competent or effective treatment for low vitality, morning lassitude, excessive yawning, chronic drowsiness, shortness of breath, run-down condition, anemia, headaches, lack of appetite, restless sleep, irregular pulse, fainting spells, palpitation, pale cheeks or lips, swollen ankles,

lack of energy or vigor, or tiredness, unless such representations be expressly limited to those cases in which such conditions are due to iron deficiency anemia, and unless such advertisement discloses that such conditions are frequently due to other causes and that in such cases said product is ineffective.

(c) That the product "Enrich" will build strong nerves, strengthen every tissue of the body, help the organs to function properly, recharge the energy system, make one healthy and robust or enable one to think more clearly or lead a happier, richer social life.

(d) That the iron present in the product "Enrich" is superior to that present in Bland Pills or other medical preparations, that the iron in the product "Enrich" is in the same form as the iron in the human body, or that the iron in said product is immediately assimilated by the body without having to be converted.

(e) That the product "Stamina" will have any effect upon one's stamina or capacity for physical exertion in excess of such aid as it may supply by reason of its food energy component.

(f) That the product "Stamina" aids digestion, reduces excess fat, has any effect upon virility, enables one to keep young, promotes vitality, benefits the nerves, or makes one mentally alert or physically fit.

(g) That the product "Stamina" is a competent or effective treatment for weak stomach, colitis, nephritis or other kidney diseases, chronic gastrointestinal and gall bladder diseases, general weakness, low vitality, insomnia or restless sleep, mental distress, depression, morbid fears, or phobias, indecision, embarrassment, a sense of impending calamity, lack of confidence, insufficient energy, peevishness, worry, sensitivity to noise or light, inability to concentrate, nervous indigestion, headaches, flushing of the face, excessive yawning, nausea, heaviness of limb, cold hands or feet, irregular pulse, tender scalp, or nervous break-down.

(h) That the product "Ritamine" is a cure or remedy or an effective preventive for colds, sinus infection, joint pains, or unsatisfactory functioning of the glands, or that the use of said product increases resistance to the rigors of winter or to diseases generally.

(i) That the product "Ritamine" is a cure or remedy for heart trouble, low vitality, poor teeth, scaly skin, tooth decay, soft gums, lack of appetite, loss of muscle tone, general weakened condition of the body, or diseases arising by reason of old age.

(j) That vitamin A provides resistance to colds, sinus troubles, or infections of the respiratory tract, that vitamin E prevents sterility, or that vitamin G improves digestion.

(*k*) That the product "Ritamine" will prevent low vitality, poor teeth, tooth decay, scaly skin, soft gums, lack of appetite, loss of muscle tone, a general weakened condition, heart diseases or impairment of heart action, neuritis, capillary weakness, unhealthy skin or nervous irritability, unless such representations be expressly limited to those cases in which such conditions would be due to deficiencies in the vitamins supplied by said product.

(*l*) That the product "Joyana" provides the minimum daily requirements of all of the essential vitamins or minerals.

(*m*) That the product "Joyana" is a cure or remedy or a competent or effective treatment for stomach distress, that it will reduce excess weight, that it will prevent or correct baldness, dandruff or gray hair, that it will aid digestion, or that it will renew energy or increase strength.

(*n*) That the product "Joyana" will correct low vitality, chronic fatigue, headaches, instability, nervousness, vague aches or pains, or insomnia: *Provided, however,* That this order shall not be construed as prohibiting respondents from representing that when said product is mixed with warm milk the resulting beverage may be helpful in inducing sleep.

(*o*) That the product "Joyana" will prevent insomnia, lack of energy or strength, low vitality, chronic fatigue, headaches, irritability, nervousness, or vague aches or pains, unless such representations be expressly limited to those cases in which such conditions would be due to deficiencies in vitamins A, B₁, and D.

(*p*) That the product "Souplets" will have any significant effect upon the nerves or upon digestion; or that it aids in the reduction of excess weight except insofar as it may, by reason of its low caloric value, be used in a reducing diet.

(*q*) That the product "Nyce Special Soap" has any effect upon the appearance of the skin other than that which may result from the cleansing of the skin.

(*r*) That the product "Nyce Cream" will keep the skin free from blackheads, enlarged pores, or other skin blemishes, or that it will prevent muddy complexion, lifeless skin, or premature wrinkles; that it will reduce enlarged pores to normal; that it will remove accumulations of wax, dirt, dust, or grime from the pores, unless such representations be limited to such accumulations as may be on the surface of the skin or in the pore openings.

(*s*) That the product "Sorbex" prevents putrefaction, acts as a detoxifier, absorbs putrefactive toxins in the colon or small intestines, or eliminates such toxins from the body; that it has antiseptic prop-

erties; that it acts as a digestant in the stomach; that it is a competent or effective treatment for peptic or duodenal ulcers, colitis, diarrhea, enteritis, cholera infantum, typhoid, food poisoning, arthritis, or rheumatism.

(*t*) That the product "Vitalets" supplies any significant quantity of vitamin B₂ (G); that it possesses any value in the treatment of acne, pimples, blemishes, eczema, or hives, or that it will alleviate skin troubles generally; that it will increase one's capacity for physical exertion; or that it will protect the eyes, ears, nose, or sinuses.

(*u*) That the product "Tam" contains none of the ordinary laxative drugs, that it relieves constipation in a new way, or that it acts through natural means; that it benefits the intestinal muscles, produces healthy bowel tone, corrects or relieves piles, or aids digestion; that it increases the appetite, unless such representations be limited to those cases in which the impairment of the appetite is due to constipation.

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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof or which fails to comply with the affirmative requirements set forth in paragraph 1 (*b*) hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason dissents in part.

DISSENTING OPINION OF COMMISSIONER LOWELL B. MASON

That many wrongful representations have been made and wrongful interpretations have followed from them is apparent from the record as well as from admissions of counsel for the defendant. An order should issue inhibiting these, but in landing on false advertising, we should not overshoot our objective.

Thus when it comes to interpreting (as we have the power to do) wrongful suggestions from rightful representations, we had best approach the field slowly.

An overdeveloped sense of responsibility plus a dim view of the public's intelligence can hatch some far-fetched prohibitions in cease and desist orders, such as I believe to be in paragraph 1 (*b*) here.

The respondent here tells his customers "Enrich" is a remedy for headaches due to lack of iron.

We have the jurisdiction to deal with this question but an order takes more than jurisdiction—it takes facts and public interest. What facts there are in the instant case have been established by a stipulation so we are not concerned with a determination as to what has been proven by a greater weight of the evidence. We must accept for the purpose of this case that "Enrich" will remedy the symptoms set forth when due to iron deficiency. The stipulation reveals that there is no more frequent single cause of these symptoms than that of iron deficiency.

We are not dealing here with a situation where the symptoms in question are rarely or almost never due to the conditions for which respondent's products are effective. As far as we know, in almost 50 percent of the cases, the cause of the trouble may be iron deficiency anemia.

If nearly half, or even a smaller percentage, of the headaches (I use this as an example) may be cured by taking iron, I see no reason for a vitamin peddler to spend money telling folks what his product is not good for.

To put it simply, if a man claims apples are in his basket, must he deny the presence of peaches? In fact, if we must assume the public to be such simpletons, to even mention peaches would make the exception appear as being also included.

I have been discouraged with the dim view the Federal Trade Commission has taken in the past regarding the intelligence of the American people. Even the courts which review our orders have been concerned with our overmeticulousness, and in some cases they have indicated between the lines a helpless despair over some of our prissy commands (if I may be permitted to use the same power of interpreting the language of the court which the statute allows me to use on advertisers).

In my opinion, we do the public a disservice when we yardstick all advertisements by their possible effect on "wayfaring men though fools" and on "that vast multitude which includes the ignorant, the unthinking and the credulous."

Maybe the above might interpret an ad that said "Enrich" will cure headaches if the headache is due to iron deficiency, to mean that "Enrich" will cure headaches due to a sock from brass knuckles or some such other far-fetched cause. If so, they need a keeper or a nurse, not the Federal Trade Commission, to protect them.

The soul of advertising is brevity and clarity. It is a public message to be understood. We in the Government bureaus seek the opposite. We want to protect ourselves from being misunderstood. Hence, all

the whereases and provisos and qualifying clauses which lead to the safe but utter confusion known as gobbledygook.

When the merchants of America must all talk like Government lawyers, life will be most complicated. Advertisements will look like the Federal Register and will be read about as frequently. We will all turn into a species of robots clicking out IBM data to one another, choosing our canned foods by code, marrying by I. Q., propagating by test tube and dying by formula. When this millenium has arrived, it will be the proper time for such an order as is here attempted.

Then will be the time for So and So's Cosmetic Co. to tell the scullery maid that she will always look like a dope even if she uses their lotion. Then it will be in order for Government to tell people not only what they must not say but also how they must finish their sentences once they open their mouths.

My objection to this order is that our timing is bad. The millenium is not here yet. The future is still far distant when the Federal Trade Commission can officially declare what advertising of food, drugs, etc., leads to correct procedures in preventing and treating human ailments.

The purpose of the Federal Trade Commission is to protect the public from unfair and deceptive advertising. We cannot cure people. We cannot determine (the science of medicine being what it is) what advertisements of food, drugs, etc., will positively lead to health. If we were able to do this, we should leave the bench and join a clinic.

I see no difference in principle between the rule that should govern paragraph 1 (b) of the order pertaining to vitamins and the rule which applies to paragraph 1 (u) in the same part of the order dealing with laxatives.

Laxatives, it is conceded, if taken improperly and under the wrong conditions, have a deleterious effect. Yet the order does not require that the representation as to laxatives must state that the symptoms sought to be cured may be also due to other causes than constipation. The Commission concedes (and, in my opinion, rightly so) the lack of any public interest requiring any such redundant statement on laxatives. There is much less reason to require it on vitamins.

So as to paragraph 1 (b) of the order to cease and desist in the above entitled cause—

I am against it.

IN THE MATTER OF
HARRY H. HEYMAN AND ETHEL P. HEYMAN, TRADING
AS SUNWAY VITAMIN CO.

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

Docket 5224. Complaint, Dec. 20, 1946¹—Decision, Mar. 25, 1948

A categorical representation by the advertiser-seller of a product that certain designated symptoms or conditions were likely to be due to a cause for which said advertiser-seller's product was beneficial, when in fact in a very substantial percentage of cases such symptoms or conditions are due to causes in the treatment of which the product advertised would have no benefit whatever, is clearly false and obviously deceptive, and the Commission is of the opinion that a representation to the same effect, made under the same circumstances, except by suggestion instead of categorically, and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms and conditions, is equally false and deceptive, and, by reason of such falsity, is subject to the exercise of the Commission's corrective jurisdiction in the same manner and to the same extent as though the representation had been made by affirmative statement.

As respects generally the acquiring by individuals of the vitamins necessary for health, it is entirely possible to do so through the ingestion of properly selected foods that are cooked appropriately, individuals generally do not require a fresh supply of vitamins daily through the administration of medicinal preparations, and there is no scientific evidence upon which to base such an assertion as that 45 million Americans are suffering perpetually from vitamin deficiency.

Where two partners engaged in the interstate sale and distribution of their "Sunway Vitamin Capsules" which contained various components of the vitamin B complex, in advertising through the mails, letters, circulars, pamphlets, booklets, and other advertising literature, and through radio continuities—

- (a) Represented, directly and by implication, that said capsules would relieve and eliminate nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to disease, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health;

The facts being that their advertisements failed to reveal that the indications of physical disorders enumerated were frequently symptoms of diseases and conditions which were not associated with a deficiency of any component of the vitamin B complex, in which event no amount of such vitamins would be effective in relieving or correcting them, and consequently, there was no reasonable likelihood that they would be benefited by the use of said preparation;

- (b) Represented that the administration of said vitamin capsules, as prescribed by them, was effective in relieving conditions arising from substantial de-

¹ Amended.