

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.

Complaint

iciency of components of the vitamin B complex; that they contained all the vitamins essential to good health; that the most carefully selected foods, cooked in the tastiest ways, failed to supply the vitamins necessary for health; and that individuals generally required a fresh supply of vitamins daily through the administration of their vitamin or like vitamin capsules; The facts being that the prescribed dosage of their capsules would not be effective in relieving or substantially improving conditions arising from substantial deficiency of components of the vitamin B complex; said capsules did not contain vitamins A, C, or D and hence did not contain all the vitamins essential to good health; it is entirely possible to secure the vitamins necessary for health through the ingestion of properly selected foods that are cooked appropriately; and individuals generally do not require a fresh supply daily through the administration of medicinal preparations; and

(c) Represented falsely that vitamin B-6 (pyridoxin) was essential to nutrition and promoted restful sleep; that pantothenic acid was appropriately referred to as the "acid of life"; that 45 million Americans suffered perpetually from vitamin deficiency; that vitamin B₂ is appropriately referred to as the "beauty vitamin"; and that their said vitamin capsules were effective in minimizing the physical conditions resulting from overindulgence in alcoholic beverages;

The facts being that scientific evidence had not established that any of such statements were true; and

(d) Falsely represented also that an initial supply of their vitamin capsules might be obtained by payment to the postman of \$1 plus a few cents postage; the facts being that it was their general practice to send their said product to the purchaser through the mails, requiring payment of c. o. d. and insurance charges and postage on delivery and before the capsules could be obtained;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true and that all facts material in the light thereof had been disclosed, and of thereby inducing its purchase of large quantities of their said preparation, and with tendency and capacity so to do;

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

Mr. John L. York for the Commission.

Hickey & Hall and *Mr. Henry Junge*, of Chicago, Ill., for respondents.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that *Harry H. Heyman* and *Ethel P. Heyman*, a copartnership, trading as *Sunway Vitamin Co.*, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding

Complaint

44 F. T. C.

by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Harry H. Heyman and Ethel P. Heyman, are copartners trading and doing business under the name and style of Sunway Vitamin Co. and having their office and principal place of business at 154 East Erie Street, in the city of Chicago, Ill.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution to members of the public in general of a medicinal preparation containing various components of the Vitamin B complex which respondents designate and identify by the trade name or brand, "Sunway Vitamin Capsules."

Respondents cause and have caused said Sunway Vitamin Capsules, when so sold, to be transported from their principal place of business in Chicago, Ill., to the purchases and users thereof in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade and commerce in said Sunway Vitamin Capsules between and among the States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertistments concerning their said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondents have also disseminated and are now disseminating, and have cause and are now causing the dissemination of false advertistments concerning their said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertistments, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by means of letters, circulars, pamphlets, booklets, and other advertising literature and by radio continuities, are the following:

According to highest medical and health authorities *any* or all of the following conditions may result from a lack of necessary Vitamins: *lack of vigor—physical and mental dullness—lack of ambition—tire easily—poor digestion—restless sleep—aches and pains—nervousness—low resistance to disease, colds, and coughs—unhealthy skin and hair—irritable disposition—failing appetite—and many more.*

Wouldn't you like to feel full of pep and energy, gloriously alive, glowing with health, free from nervous upsets? Wouldn't you like to enjoy normal sleep and appetite, stamina to carry through all day long, sunny disposition, and a cheerful outlook on life? Why of course you would! Who wouldn't? VITAMINS may be the answer, the means to better health and energy for you. Use the enclosed order blank, and order your SUNWAY VITAMINS today.

These Sunway Capsules contain the all-important Vitamin B₁ for good nerves, good appetite and digestion—and a vitamin absolutely essential to vigorous vitality! And they contain B₂—often called the Beauty vitamin; they contain Pyriodoxin—the B vitamin that promotes restful sleep; Pantothenic acid, often called the "Acid of life"; Nicotinic Acid; and—the important liver concentrate, which enriches the blood. All of these vitamins—as well as others beneficial to health, are present in Sunway Vitamin Capsules! And *only* in Sunway Vitamin Capsules can you obtain this high-power formula in the strength of vitamins it contains!

Vitamin B₁ (Thiamin) — — — — minimizes after effects of alcohol — — —.

Cooking destroys many of the VITAMINS in foods. Therefore, the most carefully selected diet, cooked in the tastiest ways, will usually fail to supply the full quota of needed VITAMINS each day.

VITAMINS are not stored within the body (except small quantities of A). The body simply discards any excess supply. A fresh supply is required DAILY. — — — — So when your present supply of SUNWAY VITAMINS is gone, a new supply may become heaven-sent *HEALTH INSURANCE* at a cost of but a few cents per day.

That tired-out feeling of yours may indicate that you are one of the 45,000,000 Americans said to be living in a perpetual state of "half health" simply because of Vitamin deficiency! Yes, 45,000,000 seemingly well-fed Americans suffering from Vitamin deficiency!

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import not specifically set out herein, respondents represent, directly and by implication, as follows:

(1) Sunway Vitamin Capsules will relieve and eliminate generally nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to diseases, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health in individuals.

(2) The administration of said vitamin capsules as prescribed by respondents is effective in relieving conditions arising from substantial deficiency of one or more components of the vitamin B complex in the human body.

(3) Said vitamin capsules contain all of the vitamins that are beneficial in promoting or maintaining good health in individuals generally.

(4) Individuals generally require a fresh supply of vitamins daily through the administration of respondents' vitamin capsules or like vitamin capsules as the most carefully selected diet, cooked in the tastiest way fails to supply the necessary vitamins.

Complaint

44 F. T. C.

(5) Vitamin B₆ (Pyriodoxin) is essential to nutrition and promotes restful sleep.

(6) Pantothenic acid is appropriately referred to as the "Acid of Life."

(7) Forty-five million Americans suffer perpetually from vitamin deficiencies.

(8) Vitamin B₂ is appropriately referred to as the "beauty vitamin."

(9) Respondents' vitamin capsules are effective in minimizing the physical conditions resulting from overindulgence in alcoholic beverages.

PAR. 5. In truth and in fact, the foregoing representations and implications made by respondents are false, deceptive, and misleading in the following respects:

(1) Said vitamin capsules will not generally relieve or correct nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to diseases, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health in individuals. These indications of physical disorders are frequently symptoms of diseases and conditions of the body that are not associated with a deficiency of any component of the vitamin B complex, and in such cases, no amount of such vitamins would be effective in relieving or correcting said symptoms, diseases or conditions.

(2) Where physical conditions arise from substantial deficiency of one or more of the components of the vitamin B complex, dosage of said vitamin capsules as prescribed by respondents will not be effective in relieving or substantially improving said conditions, as much stronger dosage of said vitamins is then required.

(3) Said vitamin capsules do not contain vitamins A, C, or D and hence do not contain all of the vitamins that are beneficial in promoting or maintaining good health in individuals.

(4) Individuals generally do not require a fresh supply of vitamins daily through the administration of medicinal preparations and it is entirely possible to secure the vitamins necessary for health through the ingestion of properly selected foods that are cooked appropriately.

(5) It has not been established upon the basis of scientific evidence that vitamin B₆ is essential to nutrition or promotes restful sleep or that Pantothenic acid can be referred to appropriately as the "Acid of life" or that vitamin B₂ can be appropriately referred to as the "beauty vitamin."

(6) There is no scientific evidence upon which to base the assertion that 45,000,000 Americans are suffering perpetually from vitamin deficiencies or that the use of respondents' product or of any like product

will minimize the conditions resulting from overindulgence in alcoholic beverages.

The said advertisements are also false and misleading in that they fail to disclose facts material in the light of the representations therein contained, that is, that the causes of the conditions referred to in said advertisements are so numerous that the mere existence thereof are such uncertain indications of vitamin deficiencies that there is no reasonable likelihood that persons will be benefited by the use of respondents' product.

PAR. 6. Respondents likewise represent in said advertising material that an initial supply of said vitamin capsules can be obtained by payment to the purchaser's postman of \$1 plus a few cents postage, whereas in truth and in fact such initial supply of said vitamin capsules cannot be obtained by such payment since it is the general practice of respondents to send said capsules to the purchaser by the United States mails, requiring cash on delivery and the c. o. d. charges, insurance charges and postage required, amount to more than a few cents.

PAR. 7. Said representations and implications made by respondents in said advertising material have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers of said Sunway Vitamin Capsules, and a substantial portion of the general public by creating the erroneous belief that said representations and implications are true and that all facts material in the light of the representations made by respondents have been disclosed in said advertising. By the use of said false advertisements and the representations and implications made therein, respondents cause and have caused a substantial portion of the purchasing public to buy large quantities of respondents' vitamin capsules.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 25, 1944, issued and subsequently served its complaint in this proceeding upon respondents, Harry H. Heyman and Ethel P. Heyman, copartners trading as Sunway Vitamin Co., 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,

and on December 20, 1946, the Commission issued and subsequently served its amended complaint upon said respondents. After the filing of respondents' answer to said amended complaint, the Commission, by order entered herein granted respondents' motion for permission to withdraw said answer to said amended complaint and to substitute therefor an answer admitting all the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended complaint and substitute answer, 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. Respondents, Harry H. Heyman and Ethel P. Heyman, are copartners trading and doing business under the name and style of Sunway Vitamin Co. with their office and principal place of business located at 154 East Erie Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a medicinal preparation containing various components of the vitamin B complex which respondents designate and identify by the trade name or brand "Sunway Vitamin Capsules." Respondents cause said preparation, when sold, to be transported from the State of Illinois to purchasers thereof in various other States of the United States and in the District of Columbia, and respondents maintain, and at all times mentioned herein have maintained, a course of trade and commerce in said preparation among and between the States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and have caused the dissemination of advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representa-

tions contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by means of letters, circulars, pamphlets, booklets, and other advertising literature, and by radio continuities, are the following:

According to highest medical and health authorities *any* or all of the following conditions may result from a lack of necessary Vitamins: *lack of vigor—physical and mental dullness—lack of ambition—tire easily—poor digestion—restless sleep—aches and pains—nervousness—low resistance to disease, colds and coughs—unhealthy skin and hair—irritable disposition—failing appetite—and many more.*

Wouldn't you like to feel full of pep and energy, gloriously alive, glowing with health, free from nervous upsets? Wouldn't you like to enjoy normal sleep and appetite, stamina to carry through all day long, sunny disposition and cheerful outlook on life? Why of course you would! Who wouldn't? VITAMINS may be the answer, the means to better health and energy for you. Use the enclosed order blank, and order your SUNWAY VITAMINS today.

These Sunway Capsules contain the all important Vitamin B-1 for good nerves, good appetite and digestion—and a vitamin absolutely essential to vigorous vitality! And they contain B₂—often called the Beauty vitamin; they contain Pyridoxin—the B vitamin that promotes restful sleep; Pantothenic acid, often called the "Acid of life"; Nicotinic Acid; and—the important liver concentrate, which enriches the blood. All of these vitamins—as well as others beneficial to health, are present in Sunway Vitamin Capsules! And *only* in Sunway Vitamin Capsules can you obtain this high power formula in the strength of vitamins it contains!

Vitamin B-1 (Thiamin)— — — — minimizes after-effects of alcohol — — — —.

Cooking destroys many of the VITAMINS in foods. Therefore the most carefully selected diet, cooked in the tastiest ways, will usually fail to supply the full quota of needed VITAMINS each day.

VITAMINS are not stored within the body (except small quantities of A). The body simply discards any excess supply. A fresh supply is required DAILY. — — — — so when your present supply of SUNWAY VITAMINS is gone, a new supply may become heaven-sent HEALTH INSURANCE at a cost of but a few cents per day.

That tired-out feeling of yours may indicate that you are one of the 45,000,000 Americans said to be living in a perpetual state of "half health" simply because of Vitamin deficiency? Yes, 45,000,000 seemingly well-fed Americans suffering from Vitamin deficiency!

PAR. 4. Through the use of the foregoing statements and representations and others of the same import, respondents have represented, directly and by implication, as follows:

(1) That Sunway Vitamin Capsules will relieve and eliminate nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to diseases, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health in individuals.

(2) That the administration of said vitamin capsules, as prescribed by respondents, is effective in relieving conditions arising from sub-

stantial deficiency of one or more components of the vitamin B complex in the human body.

(3) That said vitamin capsules contain all of the vitamins that are beneficial in promoting or maintaining good health in individuals generally.

(4) That the most carefully selected foods, cooked in the tastiest ways, fail to supply the vitamins necessary for health, and that individuals generally require a fresh supply of vitamins daily through the administration of respondents' vitamin capsules or like vitamin capsules.

(5) That vitamin B₆ (pyridoxin) is essential to nutrition and promotes restful sleep.

(6) That pantothenic acid is appropriately referred to as the "acid of life."

(7) That 45,000,000 Americans suffer perpetually from vitamin deficiencies.

(8) That vitamin B₂ is appropriately referred to as the "beauty vitamin."

(9) That respondents' vitamin capsules are effective in minimizing the physical conditions resulting from overindulgence in alcoholic beverages.

PAR. 5. The foregoing statements and representations are false, deceptive, and misleading, in the following respects:

(1) Respondents' preparation, Sunway Vitamin Capsules, will not generally relieve or correct nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to diseases, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health in individuals. These indications of physical disorders are frequently symptoms of diseases and conditions of the body that are not associated with a deficiency of any component of the Vitamin B complex, and in such cases, no amount of such vitamins would be effective in relieving or correcting said symptoms, diseases or conditions.

(2) Where physical conditions arise from substantial deficiency of one or more of the components of the vitamin B complex, dosage of said vitamin capsules as prescribed by respondents will not be effective in relieving or substantially improving said conditions, as much stronger dosage of said vitamins is then required.

(3) Said vitamin capsules do not contain vitamins A, C, or D and, hence, do not contain all of the vitamins that are beneficial in promoting or maintaining good health in individuals.

(4) It is entirely possible to secure the vitamins necessary for health through the ingestion of properly selected foods that are cooked appropriately, and individuals generally do not require a fresh supply of vitamins daily through the administration of medicinal preparations.

(5) It has not been established upon the basis of scientific evidence that vitamin B₆ (Pyriodoxin) is essential to nutrition or promotes restful sleep, or that pantothenic acid can be referred to appropriately as the "acid of life," or that vitamin B₂ can be appropriately referred to as the "beauty vitamin."

(6) There is no scientific evidence upon which to base the assertion that 45,000,000 Americans are suffering perpetually from vitamin deficiencies, or that the use of respondents' preparation or of any like product will minimize the conditions resulting from overindulgence in alcoholic beverages.

Respondents' advertisements contain no statement to the effect that the causes of the conditions referred to in such advertisements are so numerous that the existence of such conditions is not necessarily an indication of vitamin deficiency and that, consequently, there is no reasonable likelihood that a person suffering with such conditions will be benefited by the use of respondents' preparation.

In recommending their preparation as a cure or remedy for certain designated ailments, symptoms or conditions, the respondents suggest not only that such ailments, symptoms or conditions may be due to causes for which the preparation is beneficial but also that there is at least a reasonable chance that they are in fact due to such causes. If such a representation be made in a categorical statement, and if, for example, in a very substantial percentage of cases the ailments, symptoms or conditions are due to causes in the treatment of which the preparation 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 if it be unaccompanied by an appropriate disclosure of the possibility of other causes of the ailments, 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 statements.

PAR. 6. Respondents have also represented in their advertising material that an initial supply of their vitamin capsules may be obtained by payment to the purchaser's postman of \$1 plus a few cents

Order

44 F. T. C.

postage, whereas, in truth and in fact, such initial supply of said vitamin capsules cannot be obtained by such payment. It is the general practice of respondents to send their capsules to the purchaser through the United States mails, requiring cash on delivery, and the c. o. d. charges, insurance charges and postage must all be paid before the capsules are obtained.

PAR. 7. The use by respondents of the foregoing false, misleading, and deceptive statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that all facts material in the light of the representations made by respondents have been disclosed. In consequence of such erroneous and mistaken belief, such portion of the purchasing public has been induced to purchase, and has purchased, large quantities of respondents' preparation.

CONCLUSION

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

Commissioner Mason dissenting in part in accordance with his views as expressed in Docket 5070—American Dietetics Co., Inc.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer of respondents in which answer respondents admit all of the material allegations of fact set forth in said amended complaint and waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Harry H. Heyman and Ethel P. Heyman, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Sunway Vitamin Capsules, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) That the use of said preparation will relieve or eliminate the symptoms or disorders of nervousness, lack of energy, restless sleep, indigestion, aches and pains, loss of appetite, low resistance to diseases, colds and coughs, unhealthy skin and hair, dizzy spells, and general poor health in individuals, unless such advertisement clearly reveals that the aforesaid symptoms or disorders are frequently caused by conditions other than a deficiency of components of the vitamin B complex, and that in such cases respondents' preparation will not be effective in relieving or correcting said symptoms, disorders or conditions.

(b) That the administration of said preparation, as prescribed by respondents, is effective in relieving or substantially improving conditions arising from substantial deficiency of one or more components of the vitamin B complex in the human body.

(c) That said preparation contains all of the vitamins that are beneficial in promoting or maintaining good health in individuals.

(d) That individuals generally require a fresh supply of vitamins daily in addition to those obtained from properly selected foods appropriately cooked.

(e) That vitamin B₆ (pyridoxin) is essential to nutrition or promotes restful sleep.

(f) That pantothenic acid is appropriately referred to as the "acid of life."

(g) That 45,000,000 Americans suffer perpetually from vitamin deficiencies.

(h) That vitamin B₂ is appropriately referred to as the "beauty vitamin."

(i) That respondents' vitamin capsules are effective in minimizing the physical conditions resulting from overindulgence in alcoholic beverages.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to comply with the affirmative requirements set forth in paragraph 1 (a) hereof.

Order

44 F. T. C.

It is further ordered, That the respondents, Harry H. Heyman and Ethel P. Heyman, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Sunway Vitamin Capsules, do forthwith cease and desist from representing, directly or indirectly, that a supply of their product may be obtained by the payment of any sum of money, plus a few cents postage, unless at the same time it is clearly and conspicuously disclosely that the c. o. d. and insurance charges also must be paid.

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 dissenting in part in accordance with his views as expressed in Docket 5070—American Dietoids Co., Inc. [See *ante*, p. 667, at p. 705.]

Syllabus

IN THE MATTER OF

GEORGE F. HAUPTMAN TRADING AS MARKET DRUG AND
SAMPSON DRUG CO.

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

Docket 5478. Complaint, Jan. 29, 1947—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 single uncomplicated deficiencies such as of iron, or vitamin B₁, consumption of inadequate diets rarely leads thereto, but usually results in a deficiency of many nutritional factors.

While a given product containing iron and vitamin B₁ may provide additional energy, promote vitality and tone up the system in those cases in which a lack of energy, vitality and proper body tone are due solely to uncomplicated deficiencies of iron or of said vitamin, each of the aforesaid symptoms may result from many bodily conditions and other causes not connected with either of said deficiencies, in which event they would not be benefited by the use of such a product.

Where an individual engaged in the interstate sale and distribution of a drug product designated "Peptotabs"; through newspaper advertisements and otherwise, directly and by implication—

(a) Represented that his said product, used as directed, would correct conditions of nutritional origin resulting in a lack of pep, listlessness, weakness, nervousness, and tiredness;

The facts being his product would be of benefit only when such symptoms were due solely to uncomplicated iron or vitamin B₁ deficiencies; while the symptoms may be due to such deficiencies, they are much more frequently due to diseases which have no relationship thereto; and inadequate diets rarely lead to a single uncomplicated deficiency, as of iron or vitamin B₁, but usually result in a deficiency of many nutritional factors, in which said product would have no beneficial effect;

(b) Represented that its said product would build richer, redder blood, provide extra energy, promote vitality, and tone up the system;

The facts being that, as noted above, it would have such effects only in cases of uncomplicated iron or vitamin B₁ deficiencies; and