

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

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- (c) Falsely represented that the lecithin ingredient of his said product, a constituent of nerve tissue and brain substance, would have a beneficial effect upon nerves and brain tissues;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that said advertisements were true and that all facts material in the light of the representations made therein had been disclosed, whereby it was induced to buy large quantities of his product:

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

Mr. B. G. Wilson for the Commission.

Mr. Peter James Carroll, of Philadelphia, Pa., for respondent.

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 George F. Hauptman, an individual trading as Market Drug and Samson Drug Co., hereinafter referred to as respondent, has 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. George F. Hauptman is an individual trading as Market Drug and Samson Drug Co., with his office and principal place of business located at 209 Chestnut Street, Philadelphia, Pa.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a drug preparation, as "drug" is defined in the Federal Trade Commission Act.

The designation used by said respondent for his said preparation and the formula and directions for its use are as follows:

Designation: Peptotabs.

Formula: Each tablet contains:

Ferrous sulphate.....	grains	3
Iron Peptonate.....	do	1½
Manganese glycerophosphate.....	do	½
Calcium glycerophosphate.....	do	1
Lecithin.....	do	¼
Thiamin chloride.....	milligrams	2

Directions: One or two tablets four times daily or as required. If there is difficulty in swallowing, tablets may be powdered.

The said respondent causes his said preparation, when sold, to be transported from his place of business in the State of Pennsylvania to

the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements appearing in the Evening Bulletin, Philadelphia, Pa., headed: "No Pep? Build Richer, Redder Blood" and respondent has disseminated and caused the dissemination of advertisements concerning the preparation "Peptotabs" by various means, including, but not limited to, the advertisements referred to above, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid, are the following:

NO PEP?

BUILD RICHER,
REDDER BLOOD

If you feel so tired and dragged out that you can't enjoy life's pleasures, you may be suffering from iron deficient anemia of nutritional origin. Here's encouraging news! PEPTOTABS * * * the new, scientific tonic tablets containing Iron, Vitamin B1 and Lecithin, help nature build richer, redder blood * * * promote vitality * * * tone up your system. * * *

PLAYED OUT?

BUILD RICHER,
REDDER BLOOD

If you drag through the day feeling weak and run-down * * * a little pepping-up with PEPTOTABS may be just what you need for extra energy. PEPTOTABS * * * the new scientific tonic tablets contain iron and Vitamin B1. In addition to these vital elements PEPTOTABS contain Lecithin * * * a constituent of nervous tissue and brain substances. * * *

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set-out herein, respondent has represented, directly and by implication, that said preparation used as directed, will correct conditions of nutritional origin resulting in a lack of pep, listlessness, weakness, nervousness and tiredness; that said preparation will build richer, redder blood, provide extra energy, promote vitality, and tone up the system; and that "Peptotabs" contain

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lecithin, a constituent of nerve tissue and brain substance which will have a beneficial effect upon the nerves and brain tissue.

PAR. 6. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, while lack of pep, and listlessness, weakness, nervousness, and tiredness may be due to iron and iron and vitamin B₁ deficiencies, they are much more frequently due to diseases, both acute and chronic, which have no relationship to either iron or vitamin B₁ deficiencies and when so due will not be benefited by the use of respondent's preparation. Moreover, while such symptoms, when due solely to uncomplicated iron deficiency or solely to uncomplicated vitamin B₁ deficiency may be benefited by the use of said product, the consumption of inadequate diets rarely leads to a single uncomplicated deficiency such as iron deficiency or vitamin B₁ deficiency, but usually results in a deficiency of many nutritional factors.

Lack of color and richness of the blood may result from many bodily conditions, one of which is uncomplicated iron deficiency anemia. When due to this cause, respondents preparation will be of value, but will be of no value when due to other causes. Likewise, lack of vitality and energy and proper body tone result from many causes, and respondent's preparation will be of benefit in such cases only when due to uncomplicated iron deficiency and uncomplicated vitamin B₁ deficiency, both of which are rare.

Respondent's advertisements, as aforesaid, are consequently false and misleading for the reason that they fail to reveal the material fact that the symptoms therein set forth and above set out are most frequently due to diseases not related to either iron or vitamin B₁ deficiencies and that unless the said symptoms are due solely to uncomplicated iron deficiency or uncomplicated vitamin B₁ deficiency, which rarely occur, said preparation will not be of benefit and that the causes of the said symptoms are so numerous that the mere existence thereof are such uncertain indications of iron or vitamin B₁ deficiencies that there is no reasonable likelihood that they will be benefited by the use of said preparation. Said advertisements are also false for the reason that they fail to reveal that the lack of rich, red blood may be due to many causes and that respondent's preparation will assist in building richer, redder blood only in case of uncomplicated iron deficiency anemia, which is rare, and that the said preparation will increase the vitality and energy and tone up the system only when the lack thereof is due solely to uncomplicated

iron deficiency or uncomplicated vitamin B₁ deficiency, or both, and that such conditions are rare.

The lecithin in respondent's preparation will have no beneficial effect upon the nerves or brain tissue.

PAR. 7. The use by the respondent of the trade name "Peptotabs" is false, misleading, and deceptive, in that it serves as a representation that the use of said preparation will result in more pep, a greater degree of vitality, overcome weakness, listlessness, nervousness, and tiredness, which is contrary to fact except to the limited extent and under the rare conditions set forth in paragraph 6.

PAR. 8. The aforesaid acts and practices of respondent, 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 January 29, 1947, issued and subsequently served its complaint in this proceeding upon the respondent, George F. Hauptman, an individual trading under the names Market Drug and Samson Drug Co., charging him with the use of unfair and deceptive acts and practices in violation of the provisions of said act. On May 20, 1947, the respondent filed his answer to said complaint in which he admitted all the material allegations of fact set forth therein and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George F. Hauptman, is an individual trading under the names Market Drug and Samson Drug Co., with his office and principal place of business located at 209 Chestnut Street, Philadelphia, Pa.

PAR. 2. The respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a drug product designated "Peptotabs." Said respondent causes this product when sold to be transported from his place of business in the State of

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Pennsylvania to the purchasers thereof in various other states of the United States and in the District of Columbia, and the respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product among and between the states of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his business the respondent, subsequent to March 21, 1938, has disseminated and has caused the dissemination of certain advertisements concerning the product "Peptotabs" by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said product. Such advertisements have included, but were not limited to, advertisements headed "No Pep? Build Richer, Redder Blood," appearing in the newspaper, the Evening Bulletin, of Philadelphia, Pa. The respondent has also disseminated and has caused the dissemination of advertisements concerning said product by various means, including but not limited to, the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, are the following:

NO PEP?

BUILD RICHER,
REDDER BLOOD

If you feel so tired and dragged out that you can't enjoy life's pleasures, you may be suffering from iron deficient anemia of nutritional origin. Here's encouraging news! PEPTOTABS * * * the new, scientific tonic tablets containing Iron, Vitamin B₁ and Lecithin, help build richer, redder blood * * * promote vitality * * * tone up your system. * * *

PLAYED OUT?

BUILD RICHER,
REDDER BLOOD

If you drag through the day feeling weak and run-down * * * a little pepping-up with PEPTOTABS may be just what you need for extra energy. PEPTOTABS * * * the new scientific tonic tablets contain iron and Vitamin B₁. In addition to these vital elements PEPTOTABS contain Lecithin * * * a constituent of nervous tissue and brain substances. * * *

PAR. 5. Through the use of the foregoing statements and representations, and others similar thereto, the respondent has represented,

directly and by implication, that the product "Peptotabs," when used as directed, will correct conditions of nutritional origin resulting in a lack of pep, listlessness, weakness, nervousness, and tiredness; that said product will build richer, redder blood, provide extra energy, promote vitality, and tone up the system; and that Peptotabs contain lecithin, a constituent of nerve tissue and brain substance which will have a beneficial effect upon the nerves and brain tissues.

PAR. 6. Each tablet of the product "Peptotabs" contains the following ingredients in the quantities stated:

Ferrous sulphate	grains	3
Iron peptonate	do	1½
Manganese glycerophosphate	do	½
Calcium glycerophosphate	do	1
Lecithin	do	¼
Thiamin chloride	milligrams	2

The directions for use are "One or two tablets four times daily or as required. If there is difficulty in swallowing, tablets may be powdered."

PAR. 7. The product "Peptotabs" will be of benefit in cases of lack of pep, listlessness, weakness, nervousness, and tiredness only when such symptoms are due solely to uncomplicated iron or vitamin B₁ deficiencies. While these symptoms may be due to iron or vitamin B₁ deficiencies, or to both, such symptoms are due much more frequently to diseases, chronic or acute, which have no relationship to either iron or vitamin B₁ deficiencies. Moreover, the consumption of inadequate diets rarely leads to a single uncomplicated deficiency such as iron deficiency or vitamin B₁ deficiency, but usually results in a deficiency of many nutritional factors, and in such cases the product "Peptotabs" will have no beneficial effect.

Similarly, the product "Peptotabs" will be of value in building richer, redder blood only in cases in which the lack of color or richness of the blood results solely from uncomplicated iron deficiency anemia, and it will provide additional energy, promote vitality, and tone up the system only in cases in which a lack of energy, vitality and proper body tone are due solely to uncomplicated iron or vitamin B₁ deficiencies. Each of these symptoms may result from many bodily conditions and other causes not connected with iron or vitamin B₁ deficiencies, and when due to any of such other causes they will not be benefited by the use of "Peptotabs."

Although the product "Peptotabs" contains lecithin as the advertisements state, this ingredient will have no beneficial effect whatever upon the nerves or brain tissues of a person using the product.

PAR. 8. In recommending his product as a cure or remedy for certain designated ailments, symptoms or conditions, respondent suggests not only that such ailments, symptoms, or conditions may be due to causes for which the product 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 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 if, as in the case of respondent's advertisements, the representation be unaccompanied by an appropriate disclosure of the possibility of other causes of the ailments, symptoms or conditions, it 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.

Respondent's advertisements are false and misleading for the further reason that they affirmatively represent that the lecithin in the product "Peptotabs" will benefit the nerves and brain tissues of a person using the product when such is not a fact.

PAR. 9. The use by the respondent of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said advertisements are true and that all facts material in the light of the representations made therein have been disclosed. In consequence of such erroneous and mistaken belief such portion of the purchasing public has been induced to purchase large quantities of the respondent's product.

CONCLUSION

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

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the re-

spondent, in which answer the respondent admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, George F. Hauptman, an individual trading under the names Market Drug and Samson Drug Co., or trading under any other name, and his agents, representatives, and employees, in connection with the offering for sale, sale or distribution of the product "Peptotabs," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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 said product will have any therapeutic effect upon the symptoms or conditions of lack of pep, vitality, or energy, "played-out" feelings, listlessness, weakness, nervousness, or tiredness, or that it will tone up the system, unless such representation be expressly limited to cases in which such symptoms or conditions are due solely to uncomplicated iron or vitamin B₁ deficiencies, and unless the advertisement reveals that said symptoms or conditions are due less frequently to uncomplicated iron or vitamin B₁ deficiencies than to other causes and that in such cases the product will not be effective in relieving or correcting them.

(b) That said product will build richer, redder blood, unless such representation be expressly limited to cases of lack of color or richness of the blood due solely to uncomplicated iron deficiency anemia, and unless the advertisement reveals that the lack of color or richness of the blood is due less frequently to uncomplicated iron deficiency anemia than to other causes and that in such cases the product will not be effective in relieving or correcting it.

(c) That said product, or the lecithin contained therein, will have any beneficial effect upon the nerves or brain tissues.

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which

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advertisement contains any representation prohibited in paragraph 1 hereof or which fails to comply with any affirmative requirement set forth in said paragraph 1 hereof.

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

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

Order

IN THE MATTER OF
AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS
ET AL.

ORDER MODIFYING ORDER OF AUG. 23, 1944

Docket 4526. Order, Mar. 31, 1948

Order in proceeding in question—in which findings, and cease and desist order, as modified June 26, 1944, are reported in 38 F. T. C. 319, and as further modified August 23, 1944, in 39 F. T. C. 101—in which said last named order required respondent association, its members, etc., in connection with the offer, etc., in commerce, of law books and related publications, to cease and desist from concertedly or cooperatively establishing, fixing, or maintaining discounts and terms or conditions of sale therefor, and maintaining or adhering to the selling price, terms, and conditions fixed and established by the respondent-publisher; and from various other practices in such connection, and subject to certain exceptions as to the joint publication of any specific law book, or set of law books or related legal publication; and in which the Circuit Court of Appeals for the Second Circuit, on August 19, 1947, in *Callaghan and Co. v. Federal Trade Commission*, 163 F. (2d) 359, held said order of August 23, 1944, valid and enforceable in its entirety except with respect to one petitioner, the Frank Shepard Co., as to whom the court held said order should be modified to apply only to the extent that it forbids agreement as to allowable discounts—

Modifying aforesaid order of August 23, 1944, to apply to said the Frank Shepard Co. only to the extent that it forbids such agreement.

ORDER MODIFYING ORDER OF AUGUST 23, 1944

The order entered herein August 23, 1944, modifying an earlier modified order to cease and desist issued by the Federal Trade Commission, have been presented for review on a petition to the United States Circuit Court of Appeals for the Second Circuit by respondents, Callaghan & Co., the Frank Shepard Co., West Publishing Co., the American Law Book Co., Edward Thompson Co., Vernon Law Book Co., Washington Law Book Co., Burdette Smith Co., and James R. Spillane, and said court having held that said order is valid and enforceable in its entirety except with respect to one petitioner, the Frank Shepard Co., as to whom the court held said order should be modified to apply to said petitioner only to the extent that it forbids agreement as to allowable discounts,

It is therefore ordered, That the said order of August 23, 1944, herein, be and the same is hereby modified to apply to the Frank Shepard Co. only to the extent that it forbids agreement as to allowable discounts.