

Syllabus

IN THE MATTER OF
MID-WEST PRODUCTS (FORMERLY MID-WEST
RESEARCH LABORATORY)

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

Docket 5300. Complaint, Mar. 28, 1945—Decision, Aug. 17, 1948

A research laboratory or a laboratory, as considered in connection with serums and medicinal preparations, means a place appropriately equipped and devoted to experimental studies in medicinal or pharmaceutical science and the application of medical and pharmaceutical principles in an endeavor to develop and to verify knowledge by tests and analyses of drugs or medicinal preparations by persons skilled in those arts.

There is a preference on the part of a substantial portion of the purchasing public for dealing with the manufacturer of products, and a preference for dealing with a concern which maintains and operates a research laboratory or a laboratory in connection with its business, or produces the medicinal preparations which it sells.

Where a corporation engaged in the interstate sale and distribution of serums and medicinal preparations for the treatment of poultry and domestic animals—

(a) Falsely represented through the use of the words "Research Laboratory" in its corporate name, and display thereof on its stationery and letterheads and in booklets and other advertising media, that it owned, operated or controlled a research laboratory or a laboratory; and

(b) Falsely represented, through the subsequently discontinued use of the word "manufacturers" on its letterheads and otherwise, that it owned, operated or controlled a factory or factories wherein the preparations listed in the statement which followed, were manufactured and that it was the manufacturer thereof;

The facts being that the sale of serums and bacterins purchased from other concerns, constituted the major portion of its business and it never owned, operated or controlled any plant or factory wherein they were manufactured;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that it was the manufacturer of all the preparations it sold, and that it owned, operated or controlled a research laboratory in connection with the production thereof; as a result whereof said public purchased large quantities of said preparations:

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 receptive acts and practices in commerce.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Joseph Callaway for the Commission.

Clem & Miller, of Sioux City, Ia., for respondent.

Complaint

45 F. T. C.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Mid-West Research Laboratory, a corporation, 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. Respondent Mid-West Research Laboratory is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its principal place of business at 3806 Floyd Avenue, Sioux City, Iowa.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of serums and medicinal preparations for the treatment of poultry and domestic animals.

In the course and conduct of its business, the respondent causes its preparations, when sold, to be transported from its place of business in the State of Iowa to the purchasers thereof located in various other States of the United States, Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its preparations in commerce,

¹ The Commission on March 5, 1948, issued an order substituting Mid-West Products, a corporation, as respondent in place of Mid-West Research Laboratory, a corporation, as follows:

This matter came before the Commission for its consideration of a motion filed by counsel supporting the complaint wherein it was stated (1) that since the complaint in this proceeding was issued the respondent has changed its name from Mid-West Research Laboratory to Mid-West Products, and (2) that counsel supporting the complaint and counsel for respondent have stipulated on the record that the proceeding may be conducted against the respondent under the name Mid-West Products with the same force and effect as if an amended complaint had been issued. Counsel supporting the complaint therefore moved the Commission (1) to substitute Mid-West Products, a corporation, as respondent herein for Mid-West Research Laboratory, a corporation, and (2) that all evidence heretofore taken in the proceeding be made to apply to the said Mid-West Products and to have the same force and effect as if the complaint had been issued in the name of Mid-West Products in the first instance.

It appearing to the Commission that a copy of this motion was served on counsel for respondent on December 14, 1947, and that no answer or objection thereto has been filed; and,

The Commission being of the opinion that the requested substitution may be desirable in order to avoid possible confusion:

It is ordered, That Mid-West Products, a corporation, be, and it hereby is, substituted as a respondent herein for Mid-West Research Laboratory, a corporation.

It is further ordered, That all evidence heretofore received in this proceeding shall be applicable to the said Mid-West Products and shall have the same force and effect as if the complaint had been issued in the name of Mid-West Products originally.

respondent has made and is now making false and misleading representations as to its business status. By soliciting the sale of and selling and distributing its preparations under the corporate name of Mid-West Research Laboratory and by using said corporate name on its stationery and billheads and in booklets and other advertising media, respondent has represented and now represents that it owns, operates or controls a research laboratory or laboratory within the common and usual meaning of the words, when used in connection with the preparation of drugs and medicinal preparations, that is, a place or places appropriately equipped for and devoted to experimental study in medicinal or pharmaceutical science and the application of medical and pharmaceutical principles in an endeavor to develop and to verify knowledge by the testing and analysis of drugs or medicinal preparations by persons skilled in those arts.

In truth and in fact, respondent neither owns, operates or controls a research laboratory or a laboratory.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its medicinal preparations in commerce, respondent has made other false and misleading representations as to its business status by means of statements on its letterheads and otherwise. A typical statement is as follows:

Manufacturers and Distributors:

Bacterins and Denver Serum

Mineral and Regulators

Worm Oils and Medicated Oils

Tonics and Antiseptics

Worm Tablets for Poultry,

Swine and Sheep.

PAR. 5. Through the use of the word "Manufacturers" respondent has represented and now represents that it owns, operates, or controls a factory or factories wherein the preparations listed in said statement are manufactured, and that respondent is the manufacturer of such preparations. In truth and in fact, respondent is not the manufacturer of any substantial portion of said preparations, nor does it own, operate, or control any factory wherein is manufactured any substantial portion thereof. On the contrary, respondent purchases practically all of the preparations offered for sale and sold by it from others.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for dealing with the manufacturer of products sold by it and a preference for dealing with a concern which maintains and operates a research laboratory, or a laboratory, in connection with its business.

Findings

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PAR. 7. The use by the respondent of the word "Manufacturer" and the term "Research Laboratory" as above set forth has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent is the manufacturer of the preparations listed in its advertising matter and that it maintains and operates a research laboratory in connection with its business and into the purchase of its said preparations, in commerce, because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the 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 March 28, 1945, issued and subsequently served its complaint in this proceeding upon the respondent Mid-West Products (formerly Mid-West Research Laboratory), a corporation, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Mid-West Products, is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its principal place of business located at 38.6 Floyd

Avenue, Sioux City, Iowa. At the time of the issuance of the complaint the name of this respondent was Mid-West Research Laboratory, but said respondent, by resolution of its board of directors and by otherwise complying with the laws of the State of Iowa, has now changed its name to that of Mid-West Products. The record contains a stipulation by counsel for respondent and counsel supporting the complaint to the effect that this proceeding may be conducted against the respondent under the name Mid-West Products with the same force and effect as if an amended complaint had been issued, and on March 5, 1948, the Commission, by formal order, substituted Mid-West Products, a corporation, as the respondent herein for Mid-West Research Laboratory.

The respondent is now and for more than 2 years last past has been engaged in the sale and distribution of serums and medicinal preparations for the treatment of poultry and domestic animals.

PAR. 2. In the course and conduct of its business, the respondent causes the aforesaid preparations, when sold, to be transported from its place of business in the State of Iowa to purchasers thereof at their respective points of locations in various States of the United States other than Iowa; and the respondent maintains and at all times mentioned herein has maintained a regular course of trade in said preparations in commerce among and between the various States of the United States.

PAR. 3. For the purpose of inducing the purchase of its serums and medicinal preparations in commerce, the respondent, for more than 1 year prior to the issuance and service of the complaint herein, solicited the sale and sold and distributed its preparations under its corporate name Mid-West Research Laboratory, and used said corporate name on its stationery and letterheads and in booklets and other advertising media. By such use of said corporate name, the respondent represented that it owned, operated, or controlled a research laboratory or a laboratory, that is, a place appropriately equipped and devoted to experimental study in medicinal or pharmaceutical science and the application of medical and pharmaceutical principles in an endeavor to develop and to verify knowledge by tests and analyses of drugs or medicinal preparations by persons skilled in those arts. In truth and in fact, the respondent has never owned, operated, or controlled any laboratory, research or otherwise. Its representations to the contrary were wholly false and misleading.

PAR. 4. In promoting the sale of its medicinal preparations in commerce the respondent, by means of statements on its letterheads

Conclusion

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and otherwise, has made further representations concerning its business status as follows:

MANUFACTURERS & DISTRIBUTORS:

BACTERINS AND DENVER SERUM
MINERALS AND REGULATORS
WORM OIL AND MEDICATED OILS
DISINFECTANTS AND SPRAYS
TONICS AND ANTISEPTICS
WORM TABLETS FOR POULTRY,
SWINE AND SHEEP

PAR. 5. Through the use of the word "Manufacturers" (which the respondent has discontinued since the complaint was issued), the respondent represented that it owned, operated, or controlled a factory or factories wherein the preparations listed in said statement were manufactured, and that the respondent was the manufacturer of such preparations. In truth and in fact, the sale of serums and bacterins purchased from other concerns constitutes and has constituted the major portion of the respondent's business. The respondent does not now, nor has it ever, owned, operated or controlled any plant or factory wherein such preparations were or are manufactured. The respondent's representation to the contrary was therefore false and deceptive.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for dealing with the manufacturer of products and a preference for dealing with a concern which maintains and operates a research laboratory or a laboratory in connection with its business of producing the medicinal preparations which it sells.

PAR. 7. The use by the respondent of the word "Manufacturers" and of the term "Research Laboratory," as above set forth, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent was the manufacturer of all the preparations it sells, and into the erroneous and mistaken belief that the respondent owned, operated, or controlled a research laboratory or a laboratory in connection with the production of such preparations. As a result of such erroneous and mistaken belief so engendered, the public has purchased large quantities of the respondent's preparations.

CONCLUSION

The acts and practices of the respondent as herein found were all to the prejudice and injury of the public and constituted unfair and

deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested); 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, Mid-West Products (formerly Mid-West Research Laboratory), a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of serums and medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Research Laboratory" or the word "Laboratory," or any other word or term of similar import or meaning, in its corporate or trade name, or in any manner, to describe its business status, unless and until it owns and operates an appropriately equipped laboratory for the compounding and testing of the preparations it offers for sale and where research work is conducted by trained technicians as a part of its business.

2. Representing, through the use of the word "Manufacturer" or through the use of any other word or term of similar import or meaning, that the respondent is the manufacturer of any products sold by it which are not made in a plant or factory actually owned and operated or directly and absolutely controlled by the respondent.

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

Complaint

45 F. T. C.

IN THE MATTER OF
WILLIAM R. WARNER & COMPANY, INC.

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

Docket 4770. Complaint, June 5, 1942—Decision, Aug. 25, 1948

Where a corporation engaged in the interstate sale and distribution of its laxative preparation "Agarol"; in various advertising statements—

Represented through use of said trade name "Agarol" and the word "agar agar" therein, that said preparation contained agar agar in sufficient quantities to produce an independent laxative effect;

The fact being that while said product was a laxative, it did not contain any agar agar, and no therapeutic effects, therefore, could be attributed thereto by reason of any agar agar content; and while it did contain agar gel, a derivative of agar agar, said ingredient likewise produced no independent laxative action;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation contained agar agar in quantities sufficient to produce independent laxative action, and thereby inducing purchases of substantial quantities thereof, and with capacity and tendency so to do:

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

In said proceeding in which the complaint charged also that respondent's advertisements concerning said preparations, constituted false advertisements for the reason that they failed to reveal certain facts as to potential danger in the use thereof to individuals suffering from abdominal pains or other symptoms of appendicitis, and that continued use might result in dependence on laxatives, the Commission was unable to find that the potential danger in the use thereof was serious or that its frequent or continuous use might result in an impairment of the public health, and under the circumstances was of the opinion that no disclosures of such facts should be required in the advertising.

Before *Mr. John W. Norwood* and *Mr. Webster Ballinger*, trial examiners.

Mr. William L. Taggart for the Commission.

Breed, Abbott & Morgan, of New York City, 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