

IN THE MATTER OF
RITTER BROTHERS, INC.

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

Docket 5341. Complaint, June 26, 1945—Decision, May 3, 1949

The phrase "Blue Ribbon"—as respects the charge that, as used in the instant case, it represents or implies that the products concerned have been awarded a trophy or prize in a competitive contest, and the opposing contention that it has no significance other than to impute quality or merit to the product thus designated—is not, in the view of the Commission, misleading if used alone and unaccompanied by other words suggestive of such a contest or award for excellence in such connection, such as "trophy" or "champion"; but is misleading, it appears, when accompanied by such words.

Where a corporation engaged in the manufacture and interstate sale and distribution of fur garments made of mink, principally; in advertising in magazines and newspapers, and also on labels attached to garments, directly or by implication—

- (a) Falsely represented that the garments in question were made of peltries obtained from wild or trapped minks, when in fact they, or some of them, were made of peltries obtained from ranch minks;
- (b) Falsely represented that the peltries used in said garments were obtained from minks of registered championship stock, which were trophy or prize winners;

The facts being that said minks were not trophy or prize winners such as those to which, as best specimens, prizes or trophies are awarded at contests or exhibits held by associations of mink farm operators; and while the garments and the peltries composing them were registered by it by number for identification purposes in its office, the minks themselves were not of registered stock; and,

- (c) Represented that its trade mark was registered in the United States Patent Office through depictions of so-called "blue ribbon trophy" with the legend beneath "TRADE MARK REG. IN U. S. AND CANADA", and legend on label attached to some of the garments "REGISTERED BLUE RIBBON MINK", etc., bearing a blue ribbon rosette resembling a contest premium with a medal affixed containing the words "BLUE RIBBON TROPHY REGISTERED", etc.;

The facts being that while registered in the State of New York and in Canada, its said trade-mark was not registered in the United States Patent Office; With tendency and capacity to mislead a substantial number of dealers and members of the consuming public with respect to its products, and thereby cause purchase thereof; and with effect of placing in the hands of dealers

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an instrumentality whereby they might be enabled to mislead and deceive the consuming public:

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.

As respects the charges in the complaint in said proceeding that respondent falsely represented that the peltries in its garments were derived from mink of pure Labrador strain, the evidence appeared to be insufficient for a proper determination of the issues thus raised, and the Commission was of the opinion that said charges were not sustained by the record.

Before *Mr. Arthur F. Thomas* and *Mr. William L. Pack*, trial examiners.

Mr. DeWitt T. Puckett and *Mr. George M. Martin* for the Commission.

Leon, Weill & Mahony, 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 Trade Commission having reason to believe that Ritter Brothers, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ritter Brothers, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York and has its principal office and place of business at 224 West 30th Street, New York, New York. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of women's fur garments principally those made of mink.

Respondent causes its said fur garments, when sold by it, to be transported from its said place of business in the State of New York, to the purchasers thereof located in the various States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products 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 aforesaid business and for the purpose of inducing the purchase of its said mink garments respondent, for more than five years last past, has made and caused to be

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made many representations and statements concerning said mink garments. Such statements and representations were made in advertisements which appeared in magazines and newspapers of general circulation, on labels attached to said garments and on a medallion hanging from a small chain on a rosette of dark blue ribbon attached to some of the said garments. Among and typical of the aforementioned representations and statements are:

Blue Ribbon Trophy REGISTERED Mink. Mink Garments from the registered champions are readily identified by their inherent quality, color, and richness. The Blue Ribbon Trophy affixed to each permanently confirms its distinction.

Blue Ribbon Trophy Minks are of pure Labrador strain and are selected for the natural blue color, silk texture, and prime, enduring quality of champions. The individual registration number of each coat is engraved upon the Blue Ribbon Trophy label and stamped on the pelts.

In mink, Blue Ribbon Trophy coats—from the champions of the wild—are the national standard of excellence.

Blond Mink. A new hue on the fashion horizon. Natural blond wild Canadian mink, agleam with "northern lights."

Blue Ribbon Trophy Mink—The "Champions" of Labrador strain, with rich blue undertones, selected, styled, and manufactured by Ritter. Each coat registered by number on the individual pelts and engraved upon the Trophy label, for the full protection and lasting pride of the purchaser.

In such advertisements were depictions of the so-called "blue ribbon trophy," with a legend beneath, "TRADE MARK REG. IN U. S. AND CANADA."

To some of the said products is attached a label stating "REGISTERED BLUE RIBBON MINK by Ritter Bros.," and bearing a blue ribbon rosette resembling a contest premium with a medal affixed containing the words, "BLUE RIBBON TROPHY REGISTERED (depiction of a mink and space for a number) FROM CHAMPIONS OF THE WILD."

PAR. 3. Through the use of the statements and representations above set forth, and others of similar import not specifically set out herein, the respondent has represented that its said mink garments are made of pelts obtained from wild or trapped animals; that they are made of pelts obtained from the pure Labrador strain of minks; and that said pelts came from Labrador. The respondent also represents, in the manner aforesaid, that its said garments were made of pelts obtained from registered championship stock that were blue ribbon trophy winners. Respondent has also represented, by means of the above-described depiction of a medallion and the accompanying expression "Trade Mark Reg. in U. S. and Canada" that said trade-mark has been duly registered with the United States Patent Office and that

the pelts used in the manufacture of said garments came from prize winning animals.

PAR. 4. In truth and in fact, respondent's said fur garments were not manufactured of wild or trapped animals, nor were the pelts used in the manufacture thereof obtained from Labrador or from minks of the Labrador strain. Said garments were not made of pelts obtained from registered or championship animals, or from blue ribbon trophy or prize winners. The depiction which appears on the medalion attached to respondent's garments, and featured in some advertisements, accompanied by the expression "Trade Mark Reg. in U. S. and Canada" is not a registered trade-mark with the United States Patent Office.

PAR. 5. The fur industry and the public generally associate blue ribbons, trophies, and championships with competitive events and the term "Blue Ribbon" connotes a competitive contest with judges qualified to pass on matters of excellence. The word "trophy" implies that a distinctive emblem has been awarded in a bona fide contest as to quality. The word "champion" as applied to an animal, means generally that such animal has been entered in a contest with others of its kind and been formally adjudged the best of the lot. The word "registered," as applied to an animal, indicates acceptance of its pedigree by an impartial, independent authority and a record thereof on its registration rolls.

The term "Trade-Mark Reg. in U. S." signifies that such trade-mark is duly registered in the United States Patent Office.

PAR. 6. Mink pelts are produced commercially in the United States and Canada on what are called mink farms or ranches and associations of mink farm operators hold contests or exhibitions wherein minks from various ranches are entered and prices or trophies are awarded to the best specimens entered.

PAR. 7. Substantial quantities of mink pelts are obtained from wild or trapped minks and such pelts are recognized in the trade and by the public as being generally superior in quality and appearance to ranch-grown pelts. Pelts from Labrador minks are also regarded by the trade and by the public as superior pelts.

PAR. 8. There is a demand on the part of a substantial portion of the purchasing public for mink garments made of pelts obtained from wild or trapped minks. There is also a purchaser demand for garments made of skins obtained from Labrador minks. Likewise, there is a purchaser demand for mink garments made of pelts obtained from prize winning and registered minks.

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PAR. 9. The use by the respondent of the aforesaid false, misleading and deceptive representations and statements with respect to its mink products, disseminated as aforesaid, has had and now has the tendency and capacity to mislead and deceive and has misled and deceived purchasers and prospective purchasers with reference to respondent's said fur garments, and has caused and now causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said mink garments. By said acts and practices, respondent also places in the hands of the purchasers of its merchandise for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true facts regarding respondent's said mink products.

PAR. 10. 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 June 26, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Ritter Brothers, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondent's answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly reported and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, the trial examiner's recommended decision, and brief in support of the allegations of the complaint (counsel for respondent having filed no brief and no request for oral argument having been made); and the Commission, having considered the matter and being 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, Ritter Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New York, with its principal office and place of business located at 224 West 30th Street, New York, New York. Respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of fur garments, principally garments made of mink.

PAR. 2. Respondent causes its products, when sold, to be transported from its 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. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in its products 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 its business and for the purpose of inducing the purchase of certain of its mink garments, respondent has made various representations with respect to such garments. These representations were made in advertisements which appeared in magazines and newspapers and also on labels attached to the garments. Among and typical of these representations are the following:

Blue Ribbon Trophy Minks . . . The "Champions" of Labrador strain, with tered champions are readily identified by their inherent quality, color and richness. The Blue Ribbon Trophy affixed to each permanently confirms its distinction.

Blue Ribbon Trophy Minks are of pure Labrador Strain and are selected for the natural blue color, silk texture and prime, enduring quality of champions. The individual registration number of each coat is engraved upon the Blue Ribbon Trophy label and stamped on the pelts.

In mink, Blue Ribbon Trophy coats—from the champions of the wild—are the national standard of excellence.

Blue Ribbon Trophy Mink . . . The "Champions" of Labrador strain, with rich blue undertones, selected, styled and manufactured by Ritter. Each coat registered by number on the individual pelts and engraved upon the Trophy label, for the full protection and lasting pride of the purchaser.

In these advertisements were depictions of the so-called "blue ribbon trophy," with a legend beneath, "TRADE MARK REG. IN U. S. AND CANADA."

To some of the garments there was attached a label stating, REGISTERED BLUE RIBBON MINK by Ritter Bros., and bearing a blue ribbon rosette resembling a contest premium with a medal affixed containing the words, BLUE RIBBON TROPHY REGISTERED (depiction of a mink and space for a number) FROM CHAMPIONS OF THE WILD."

PAR. 4. Through the use of this advertising material respondent represented, directly or by implication, that the garments referred to in the advertisements were made of peltries obtained from wild or

trapped minks; that the peltries used in such garments were obtained from minks of registered championship stock; that the minks from which such peltries were obtained were trophy or prize winners; and that respondent's trade-mark was registered in the United States Patent Office.

PAR. 5. The Commission finds from the record that these representations were false, deceptive and misleading. The garments in question or some of them were not made of peltries obtained from wild or trapped minks but were made of peltries obtained from ranch minks. The peltries used in the garments were not obtained from trophy or prize winning minks. Respondent's trade-mark was not and is not registered in the United States Patent Office, although it is registered in the State of New York and in Canada.

Mink peltries are produced commercially in the United States and Canada on mink farms or ranches, and associations of mink farm operators hold contests or exhibits where minks from various ranches are entered and prizes or trophies are awarded to the best specimens entered.

The minks from which the peltries used in respondent's garments were obtained were not registered or championship animals. While respondent maintains in its own office a record in which each of its mink garments and the peltries composing the garment are registered by number for identification purposes, this fact has no relation to the issue as to whether the minks in question were of registered stock.

PAR. 6. Another of the charges in part involves the question as to whether the expression "Blue Ribbon" as used by respondent to designate its garments represents or implies that the furs or the minks from which they are derived have been awarded a trophy or prize in a competitive contest. Respondent contends that the phrase "Blue Ribbon" has no significance other than to impute quality or merit to the product so designated. The Commission is of the view that the name is not misleading if used alone and unaccompanied by other words suggestive of a competitive contest or award for excellence in that connection, such as "trophy" or "champion." The name, it appears, is misleading when so accompanied.

The evidence appears to be insufficient for a proper determination of the issues raised in the complaint which pertain to the statement in the advertising that the peltries in respondent's garments are derived from mink of pure Labrador strain. The Commission is of the opinion that such charges are not sustained by the record.

PAR. 7. The practices of respondent, as set forth above, have the tendency and capacity to mislead and deceive a substantial number

of dealers and members of the consuming public with respect to respondent's products and have a tendency and capacity to cause the purchase thereof as a result of the erroneous and mistaken belief so engendered. Respondent's practices also place in the hands of dealers purchasing such products an instrumentality whereby such dealers may be enabled to mislead and deceive the consuming public.

CONCLUSION

The acts and practices of respondent 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondent, Ritter Brothers, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Ritter Brothers, Inc., 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, and distribution of respondent's fur garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That garments not made of peltries obtained from wild or trapped minks are made of such peltries.

(2) That the peltries used in respondent's garments are obtained from registered or championship minks.

(3) That the peltries used in respondent's garments are obtained from trophy winning or prize winning minks.

(4) That respondent's trade-mark is registered in the United States Patent Office.

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Provided, however, That nothing contained in this order shall be construed as prohibiting the use by respondent of the expression "Blue Ribbon" to designate its products when such expression is not accompanied by other words indicating or suggesting a competitive contest.

It is further ordered, That the respondent shall, within sixty 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.

Order

IN THE MATTER OF
WAIN'S LABORATORY, INC.ORDER REOPENING PROCEEDINGS AND MODIFYING FINDINGS AS TO THE FACTS
AND ORDER TO CEASE AND DESIST*Docket 4203. Order, May 20, 1949*

Order reopening proceeding in Docket 4203—in which findings as to the facts, and order to cease and desist issued on October 18, 1940, 31 F. T. C. 1142, 5 F. R. 4279—and modifying, for the reasons set forth, said findings and order directed against the false advertisement of respondent's "Wain's Compound," offered for bronchial asthma and coughs, so as to eliminate that prohibition which required certain affirmative disclosure as respects use of said preparation by those having tuberculosis or goiter, as more fully below set out.

Mr. John M. Russell for the Commission.

Mr. Robert Elliott Freer, of Washington, D. C., for respondent.

ORDER REOPENING PROCEEDING AND MODIFYING FINDINGS AS TO THE FACTS
AND ORDER TO CEASE AND DESIST

This matter came on to be heard upon request filed on April 4, 1949, on behalf of Maxwell Wain, an individual, by his attorney, for modification of the Commission's findings as to the facts and order to cease and desist in the above-entitled matter, and answer thereto filed on April 12, 1949, by William M. King, of the Commission's trial staff, admitting the facts to be as set forth in the request and interposing no objection to the requested modification.

The Commission, on October 18, 1940, issued its findings as to the facts and order to cease and desist against Wain's Laboratory, Inc., a corporation. Among other things, the Commission found that respondent's representations concerning its preparation designated "Wain's Compound" constituted false advertisements because of their failure to reveal facts material in the light of such representations and failure to reveal that the use of said preparation under the conditions prescribed or under such conditions as are customary or usual may result in injury to health by reason of its potassium iodide content. On the basis of its findings as to the facts the Commission issued its order to cease and desist in which it prohibited, among other things, the dissemination by respondent of any advertisement in connection with the offering for sale, sale, or distribution of the aforementioned

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preparation which fails to reveal that said preparation should not be used by those having tuberculosis or goitre, with the proviso that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre.

The Commission, on December 11, 1946, promulgated a statement of policy, amended on March 2, 1948, which is in pertinent part as follows:

"In the case of advertisements of food, drugs, cosmetics, or devices which are false because of failure to reveal facts material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resulting dangers may be serious or the public health may be impaired, and in such cases to require that appropriate disclosure of the facts be made in the advertising."

Subsequently, and in conformity with the foregoing policy, the Commission administratively determined that it will not be its policy to require disclosures or revelations in advertising of preparations containing iodides because of the presence of those ingredients, when such preparations are compounded and used as is customary or usual or under appropriate directions for their use.

In view of the policy statement and administrative determination referred to above, it is the opinion of the Commission that it will be in the public interest to reopen this proceeding for the purpose of modifying said findings as to the facts and order to cease and desist.

It is therefore ordered, That this proceeding be, and the same hereby is, reopened for the purpose of modifying the findings as to the facts and order to cease and desist issued herein on October 18, 1940.

It is further ordered, That said findings as to the facts be, and the same hereby are, modified by striking therefrom Paragraph Six, reading as follows:

"PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health."

It is further ordered, That said order to cease and desist be, and the same hereby is, modified by striking from paragraphs "1" and "2" thereof the parts reading as follows:

"Or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre)."

NOTE.—The original findings and order read as follows:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 30, 1940, issued, and on August 3, 1940, served, its complaint in this proceeding upon the respondent, Wain's Laboratory, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On September 11, 1940, respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and 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. Respondent, Wain's Laboratory, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its office and principal place of business at 4687 Hollywood Boulevard, Hollywood, California.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the business of selling and distributing a certain preparation containing drugs, formerly designated AMA-GON and now offered for sale and sold under the name "Wain's Compound," recommended for use in the treatment of bronchial asthma and bronchial coughs. Respondent sells its said product to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said product when sold by it, to be transported from its place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent

maintains, and at all times mentioned herein has maintained, a course of trade in its said product 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 its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly the purchase of its said product; and respondent has also disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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 advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

TO PALLIATE ATTACKS OF BRONCHIAL
ASTHMA

And Bronchial Coughs

The active ingredient in Wain's Compound works rapidly. In a few minutes it is taken into the blood stream and starts its work. No matter how long you have suffered from torturing attacks of Bronchial Asthma and Bronchial Coughs, we want you to prove the value of Wain's Compound to yourself today. Accept this generous trial offer. You must be entirely satisfied. Wain's Compound helps you, or your MONEY BACK is GUARANTEED. Sold at all OWL DRUG STORES.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's said preparation, respondent directly and by implication represents that said preparation is an effective and competent treatment for bronchial asthma and bronchial coughs; that its use gives immediate or prompt relief from the paroxysms of asthma; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not an effective or competent treatment for bronchial asthma or bronchial coughs, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and bronchial irritations.

Said preparation is not in all cases safe or harmless as it contains potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis or goitre. In arrested cases of tuberculosis the tendency of potassium iodide is to resolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goitre is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

CONCLUSION

The aforesaid 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.

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

respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Wain's Laboratory, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Wain's Compound," or any other medicinal preparation, composed of substantially similar ingredients, or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that said preparation has any therapeutic value in the treatment of bronchial asthma or bronchial coughs, in excess of relief from the paroxysms of asthma and bronchial irritations; that said preparation is in all cases safe or harmless; or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (*Provided, however*, That such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre);

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 preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (*Provided, however*, That such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre).

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Note

It is further ordered, That the respondent shall within ten (10) days after service upon it of this order file with the Commission an interim report in writing stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that within sixty (60) days after service upon it of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
DAVID M. LORENZ AND BERNHARD W. ALDEN TRADING
AS ARBEE FOOD PRODUCTS COMPANY

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

Docket 5430. Complaint, Apr. 10, 1946—Decision, May 24, 1949

Where an advertiser-vendor, in advertising directed to persons who are already ill, or so consider themselves, represents a product as a cure or effective treatment for certain designated symptoms or conditions, such persons usually have, or are under the impression that they have, one or more of the symptoms there referred to. And when in fact the causes thereof are numerous and probably are not due to that which would be reached and beneficially affected by said product, said advertiser-vendor suggests not only that the designated symptoms may be due to the cause for which the product is beneficial, but also that there is a likelihood that they are in fact due thereto. Such a representation, made by suggestion and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms or conditions, is as false and deceptive in the opinion of the Commission as one made categorically under the same circumstances, and, by reason of such falsity, is subject to the same exercise of the Commission's corrective action as though made by affirmative statement.

As respects a claim that a certain product is valuable in human nutrition by reason of its vitamin E content; use of said vitamin has not been established as essential to human nutrition.

While constipation and certain types of nervous troubles, digestive disorders, stomach and bowel trouble, neuritis, common headache, aching muscles and joints and such vague and indefinite conditions or symptoms as a tired, exhausted feeling and lack of pep, energy, and vitality may be due to a lack of vitamins, these usually arise because of diseases which bear no relationship to vitamin deficiencies, and will not be corrected or relieved by the administration of a vitamin product; nor, should they be the result of such deficiencies, will they be relieved or cured by the use of such product as that of vendor-advertiser in the quantities recommended—that is, two heaping tablespoonsful daily in the adult diet—except that, where due solely to a very minor deficiency of vitamin B₁ long and continued consumption of the product in the amount recommended may tend to overcome such conditions, for the relief of which when due solely to a vitamin B₁ deficiency, far larger quantities—usually ten to fifty times the amount recommended—are required as a therapeutic dose.

Where two partners engaged in the offer and interstate sale and distribution of a wheat-germ food product, which they designated "Spark-O-Life" prior to 1943 and subsequently as "Spark-O-Lite"; in advertising through radio broadcasts, newspapers, circulars, leaflets, order blanks and otherwise—