

Complaint

IN THE MATTER OF
MIDLAND LABORATORIES

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

Docket 5676. Complaint, July 7, 1949—Decision, Dec. 27, 1949

Where a corporation engaged in the interstate sale and distribution of two food insecticides which it designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate"; through statements in leaflets, pamphlets, and circular letters, directly and by inference—

- (a) Represented falsely that pyrethrum, contained in said concentrate, is the only insecticide safe for use around food products; the facts being that, granted proper precautions, insecticides other than those containing said substance are safe; and other active insecticidal ingredients were also contained therein;
- (b) Represented that their said "Mill-O-Cide," when used as directed, would kill food insects in all stages of insect life; and facts being that when applied, as recommended, by spraying, it would kill only those insects, insect eggs and larvae with which it came in contact;
- (c) Represented that the toxic and repellent effects of said product would remain several hours after spraying; the facts being that no particular time after spraying could be fixed within which invading insects would be killed or repelled, since effect on insects invading a storeroom or warehouse after spraying depends on variable factors, including equipment used and density of the mist created;
- (d) Represented that said preparation was not toxic or poisonous to humans or warm-blooded animals; the facts being that while, when used as directed, it was not so, it did contain ingredients which were thus toxic;
- (e) Represented that said preparation created no fire hazard; when in fact it did constitute a fire hazard unless used as directed; and
- (f) Represented that it would not taint or leave an odor on food products; when in fact if sprayed directly on food or bakery products it would impart an odor or taste thereto;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of substantial 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 deceptive acts and practices in commerce.

Mr. Joseph Callaway for the Commission.

O'Connor, Thomas & O'Connor, of Dubuque, Iowa, 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

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Trade Commission having reason to believe that Midland Laboratories, 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 Midland Laboratories is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal place of business located at 210 Jones Street, Dubuque, Iowa.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of two preparations designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate," both advertised as food insecticides. The formula for Mill-O-Cide is as follows:

	<i>Percent</i>
Pyrethrins I and II-----	0. 07
Sesamin-----	. 27
B-Butoxy-B'-Thiocyanodiethyl Ether-----	1. 69
Methyl Salicylate-----	. 55
Refined Mineral Oil-----	97. 42

Mill-O-Cide Concentrate contains a smaller proportion of refined mineral oil and larger proportions of the other ingredients.

The respondent causes and has caused its said products when sold to be shipped from its place of business located in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia. Respondent's volume of business in said products in said commerce is substantial.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said products, in commerce, respondent has made and is making many statements and representations relating to the value and effectiveness of its said products by means of advertisements in the form of leaflets, pamphlets, and circular letters. Among and typical of such statements and representations contained in said advertisements concerning Mill-O-Cide Concentrate is the following:

Mill-O-Cide Concentrate is a liquid insecticide containing pyrethrum . . . the only type of insecticide proven safe for use around food products.

Among and typical of the statements and representations contained in said advertisements concerning Mill-O-Cide are the following:

Mill-O-Cide is a "specific" aid in the control of all insects infesting flour mills (granary and rice weevil, cadelle, confused flour beetle, Mediterranean flour moth, saw-tooth grain beetle, Indian meal moth, silverfish, cockroaches, and other hard-to-kill insects).

It is a liquid "contact type" spray containing pyrethrum skillfully blended with modern synthetics and is to be regarded as a specific aid in the control of those hard-to-reach and harder-to-kill weevil, roaches (water bugs), flour moths, and silverfish (fire brats) in their egg, larval, and adult stages.

Mill-O-Cide has great "residual toxicity" due to its evaporation being retarded enough to promote prolonged contact with the insect.

High toxicity. Besides being extremely lethal to insects the toxic and repellent action of Mill-O-Cide remains for several hours after spraying.

To the user. Mill-O-Cide offers the incomparable advantages of nontoxicity, pleasant odor, and freedom from fire hazard.

Mill-O-Cide is safe to use, it is nonpoisonous, will not stain, taint, or leave an odor in bakery products.

Mill-O-Cide food insecticide, safe for use around humans and warm-blooded animals.

PAR. 4. Through the use of the above-mentioned statements and others similar thereto, but not specifically set out herein, respondent represented, directly and by inference, that pyrethrum contained in Mill-O-Cide Concentrate is the only insecticide safe for use around food products; that Mill-O-Cide, used as directed, will kill food insects in all states of insect life; that when sprayed, Mill-O-Cide permits prolonged contact with insects; that its toxic and repellent effect on insects will remain for several hours after spraying; that it is not toxic or not poisonous to humans or warmblooded animals; that its use creates no fire hazard, and that it will not taint or leave an odor in food products.

PAR. 5. The above representations are false, misleading, and deceptive in the following respects: There are insecticides other than those containing pyrethrum which are safe to use around food products if proper precautions are taken. Furthermore, Mill-O-Cide Concentrate contains active insecticidal ingredients in addition to pyrethrum. Mill-O-Cide will kill only those insects with which it comes in contact and for this reason cannot be depended upon to kill all insects in any stage of life. Grain and other cereal products when stored can become infested with insect life and in such cases Mill-O-Cide cannot be used in a manner that will kill such insects without contaminating the grain or other cereal products. The evaporation of Mill-O-Cide will not be retarded sufficiently, after spraying, so that prolonged contact with insects will be afforded. Its toxic and repellent effect on insects will not remain for several hours. Insects invading a storeroom or warehouse within a short time after the place

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has been sprayed with Mill-O-Cide will not be killed or repelled by it. Mill-O-Cide contains ingredients that are toxic to human and warm-blooded animals and ingredients which are also highly inflammable, the use of which creates a fire hazard. If sprayed directly on food or bakery products, Mill-O-Cide will taint or impart an odor to them.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations so made by respondent have had and now have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true and to cause and do cause a substantial portion of the purchasing public to purchase respondent's products because of such erroneous belief.

PAR. 7. The acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 July 7, 1949, issued and subsequently served upon the respondent, Midland Laboratories, a corporation, its complaint charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on August 11, 1949, and pursuant to leave granted the answer was amended by an appropriate document filed on September 26, 1949. Subsequently, a stipulation was entered into by and between the respondent and Daniel J. Murphy, assistant chief trial counsel of the Commission, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted, and its conclusion based thereon and entered its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent further expressly waived the filing of a trial examiner's recommended decision. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's amended answer, and the stipulation as to the facts, said

stipulation having been approved, accepted and filed; 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, Midland Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located at 210 Jones Street, Dubuque, Iowa.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution of two preparations designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate," both advertised as food insecticides. The formula for Mill-O-Cide is as follows:

	<i>Percent</i>
Pyrethrins I and II.....	0.07
Sesamin.....	.27
B-Butoxy-B'-Thiocyanodiethyl Ether.....	1.69
Methyl Salicylate.....	.55
Refined Mineral Oil.....	97.42

Mill-O-Cide Concentrate contains a smaller proportion of refined mineral oil and larger proportions of the other ingredients.

The respondent causes and has caused its preparations, when sold, to be shipped from its place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparations in commerce among and between the various States of the United States and in the District of Columbia. The respondent's volume of business in said preparations in said commerce is substantial.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said preparations, in commerce, the respondent has made and is making many statements and representations relating to the value and effectiveness of its said preparations by means of advertisements in the form of leaflets, pamphlets, and circular letters. Among such statements and representations contained in said advertisements concerning Mill-O-Cide Concentrate is the following:

Mill-O-Cide Concentrate is a liquid insecticide containing pyrethrum . . . the only type of insecticide proven safe for use around food products.

Among the statements and representations contained in said advertisements concerning Mill-O-Cide are the following:

Mill-O-Cide is a "specific" aid in the control of all insects, infesting flour mills (granary and rice weevil, cadelle, confused flour beetle, Mediterranean flour moth, sawtooth grain beetle, Indian meal moth, silverfish, cockroaches, and other hard-to-kill insects).

It is a liquid "contact type" spray containing pyrethrum skillfully blended with modern synthetics and is to be regarded as a specific aid in the control of those hard-to-reach and harder-to-kill weevil, roaches (water bugs), flour moths, and silverfish (fire brats) in their eggs, larval, and adult stages.

High toxicity. Besides being extremely lethal to insects the toxic and repellent action of Mill-O-Cide remains for several hours after spraying.

To the user. Mill-O-Cide offers the incomparable advantages of nontoxicity, pleasant odor, and freedom from fire hazard.

Mill-O-Cide is safe to use, it is nonpoisonous, will not stain, taint, or leave an odor in bakery products.

Mill-O-Cide food insecticide, safe for use around humans and warm-blooded animals.

PAR. 4. Through the use of the foregoing statements, and others similar thereto, the respondent has represented, directly and by inference, that pyrethrum contained in Mill-O-Cide Concentrate is the only insecticide safe for use around food products; that Mill-O-Cide, when used as directed, will kill food insects in all stages of insect life; that the toxic and repellent effects of Mill-O-Cide will remain for several hours after spraying; that said preparation is not toxic or poisonous to humans or warm blooded animals; that said preparation creates no fire hazard; and that Mill-O-Cide will not tint or leave an odor on food products.

PAR. 5. There are insecticides other than those containing pyrethrum which are safe for use around food products if proper precautions are taken. Furthermore, Mill-O-Cide Concentrate contains other active insecticidal ingredients in addition to pyrethrum. The recommended method of application of Mill-O-Cide is by spraying. When sprayed it will kill only those insects, insect eggs and insect larvae with which it comes in contact, and for this reason will not kill all insects in any stage of life that may be in a room when the spraying is done. The toxic and repellent effect of Mill-O-Cide on insects invading a storeroom or warehouse after the place has been sprayed depends on a number of variable factors including the type of spraying equipment used and the density of the mist in the room at the time. It is therefore not possible to fix any particular time after spraying within which invading insects will be killed or repelled. Mill-O-Cide contains ingredients that are toxic to humans and warm-blooded animals, but the preparation is not toxic to humans or warm-blooded animals

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when used as directed. Unless this preparation is used as directed it does constitute a fire hazard. If sprayed directly on food or bakery products Mill-O-Cide will impart an odor or taste to them.

PAR. 6. The Commission is of the opinion, therefore, and finds, that the statements and representations referred to in paragraphs 3, 4, and 5 are false, misleading, and deceptive.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondent's preparations.

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 and 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 respondent's amended answer thereto, and a stipulation as to the facts entered into by and between the respondent and Daniel J. Murphy, assistant chief trial counsel of the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may proceed upon the complaint, amended answer, and stipulation to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted in the stipulation, and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs; 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, Midland Laboratories, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of insecticides designated "Mill-O-Cide" and "Mill-O-Cide Concentrate," or any other

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preparation or preparations of substantially similar composition or properties, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

(a) That any of said preparations, when used as directed, will kill all insects in any stage of life: *Provided, however*, That this shall not prohibit the representation that such preparations will kill insects in any stage of life which they actually contact;

(b) That any of said preparations are not toxic to humans or warm-blooded animals, without qualifying the representation in each instance, in immediate conjunction or connection therewith, in letters of equal size and conspicuousness, to clearly indicate that the preparations must be used as directed;

(c) That the use of any of said preparations will not create a fire hazard, without qualifying the representation in each instance, in immediate conjunction or connection therewith, in letters of equal size and conspicuousness, to clearly indicate that the preparations must be used as directed;

(d) That any of said preparations may be sprayed directly on food products without leaving an odor or taste;

(e) That insects invading a storeroom or other enclosure within any particular time after it has been sprayed with any of said preparations will be killed or repelled;

(f) That pyrethrum is the only insecticide which is safe for use around food products.

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

Syllabus

IN THE MATTER OF
SKIN CULTURE INSTITUTE, INC. AND ANTHONY GETZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5490. Complaint, Apr. 7, 1947—Decision, Jan. 4, 1950*

In a proceeding in which there was coupled with a stipulation of facts which had been agreed upon between opposing counsel, a proposed order to cease and desist, which was likewise thus agreed upon and recommended for adoption by the Commission, and which provided that for a period of eight months from the date of its service, the respondent, as respects its misleading corporate name, might use, parenthetically, and following the word "formerly", its old corporate name after any new name adopted:

The Commission was of the opinion that the proposed order failed to adequately prohibit the acts and practices found to be adverse to the public interest, or to supply a proper remedy such as required by the findings of fact and conclusion in the case; but was of the further opinion, as respects said eight months provision, that while the same did not accord with the general policy of the Commission, it nevertheless appeared that the interest of justice might best be served and the public interest more expeditiously protected by making an exception to said policy and accepting said provision, since to reject it would compel abrogation of the entire agreement as to the stipulation of facts, entered into in good faith by counsel for respondents with the understanding that the order would contain such a provision, and would require a hearing on all issues raised by the complaint and answer, and thereby entail considerable expense to all parties and delay the effective date of any order to cease and desist beyond that contemplated.

Where a corporation and its president, who controlled its policies and practices, engaged in the interstate sale and distribution of certain cosmetic preparations, namely, their "Sulphidol," "Acina Lotion," "Olecerin Emollient," "Spexol Soap," "Liquidol," and "Skin Culture Yeast Masque" which they sold and distributed either as single units or, with the exception of the "Skin Culture Yeast Masque," in a combination designated "Home Routine Method," and with the "Liquidol" or "Spexol Soap" furnished interchangeably, depending upon the oiliness or dryness of the purchaser's skin;

In advertising their said preparations in circulars, issues of the New York Daily Mirror, form letters sent in reply to inquiries from readers of newspaper advertisements, and through a circular which purported to be a reprint of a column written by a so-called beauty editor in a certain issue of said Daily—

(a) Falsely represented that the use of a combination of their said "Acina Lotion", "Sulphidol" and "Olecerin", together with their "Liquidol" or "Spexol Soap", constituted an effective treatment and remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin and dry skin, and would result in a clear, unblemished complexion;