

Complaint

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IN THE MATTER OF

WILBUR F. DARNELL AND GEORGE W. DARNELL TRADING AS DARNELL DRUG COMPANY

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

Docket 5621. Complaint, Nov. 22, 1948—Decision, Feb. 2, 1950

Where two individuals engaged in the interstate sale and distribution of a product designated "Glancaps," compounded under two formulae with two directions supplied for use; through advertisements in newspapers and otherwise—

- (a) Represented falsely that said product, used as directed, constituted a competent and effective treatment for diseases of the prostate, kidneys and bladder, and would restore the normal functions thereof when impaired for any reason;
- (b) Represented falsely that use thereof would clear the entire system, and particularly said organs, of poisons; and
- (c) Represented falsely that it would build up the strength and energy of the user, and was safe and harmless;
- (d) Failed to reveal in said advertisements facts material with respect to the consequence which might result from the use of said product under customary conditions in that the irritant diuretics therein contained, were likely to result in serious and irreparable injury to injured or diseased kidneys and prolonged use was likely to cause serious injury to normal kidneys; and
- (e) Falsely represented through use of the trade name "Glancaps," that the preparation was of value in the treatment of the body glands;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce the purchase of substantial quantities of said product:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Charles S. Cox for the Commission.

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 Wilbur F. Darnell and George W. Darnell, individuals, hereinafter referred to as respondents, have 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. Wilbur F. Darnell and George W. Darnell are individuals doing business and trading as Darnell Drug Co. with their principal office and place of business at 1434 Concord Street, Indianapolis, Ind.

PAR. 2. Said respondents are now and for several years last past have been, engaged in the business of selling and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formulae and directions for use thereof, are as follows:

Designation: Glancaps.

Formulae:

Albasantal.....	3 minims
Oleoresin of Cubebs.....	2 minims
Oil of Copaida (Copaiba).....	3 minims
Rectified Turpene Oil.....	2 minims
Extract Zea Mays.....	5 grains
and	
Oil Santal.....	2 minims
Salol.....	2 grains
Copaiba.....	3 minims
Venice Turpentine.....	2 minims
Oleoresin Cubeb.....	1 minim

Directions:

"One capsule every twenty-four hours with one-half glass of water to be taken only at bedtime. Avoid alcoholic liquors."

"The minimum dose of Glancaps is one capsule every twenty-four hours, and should be taken only at bedtime. In extreme cases, or cases of long standing, two capsules may be taken and continued only until an improvement is noted."

Respondents cause their said product, when sold, to be transported from their place of business in Indianapolis, Ind., to purchasers thereof located in various other States of the United States. Respondents maintain, and all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents, subsequent to March 31, 1938, have disseminated and caused the dissemination of certain advertisements concerning their said product 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 inserted in the newspaper, Indianapolis News, published in Indianapolis, Ind., in the issues of May 6, 1941, and July 11, 1941; the newspaper, Indianapolis Star, published in Indianapolis, Ind., issues of September 14, 1941, November 9, 1941, and

in issues during June and July, 1943, also issues of November 5, 1943, March 12 and 19, 1944, April 2, 1944, December 30, 1945, February 17, 1946, March 10 and 31, 1946; and the newspaper, Cincinnati Enquirer, published in Cincinnati, Ohio, in the issues of August 12, 1945, October 7, 1945, December 9 and 30, 1945, February 10, 1946, March 2, 1947, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and caused the dissemination of advertisements concerning their 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 their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

RELIEF FOR MEN

Prostate—Kidney—Bladder

Hundreds of men endorse GLANCAPS. 50 Day treatment, price \$3; write DARNELL DRUG CO., MONTECELLO, IND. Indianapolis Office, 1206 E. Wash.

PERSONAL TO MEN

Every man who suffers with KIDNEY, BLADDER, PROSTATE or URINARY trouble should know about GLANCAPS. * * * Hundreds of men endorse GLANCAPS.

URINARY HEALTH FOR MEN

Write CLANCAPS, 1206 E. Wash., Indpls.

GLANCAPS FOR MEN!

Remove dangerous poisons; Clean up Prostate, Kidneys, Bladder, Urinary Organs. Renew normal strength and energy. * * *

GLANCAPS END PROSTATE MISERY (OR MONEY REFUNDED) 40-DAY TREATMENT PRICE \$3. Regardless of age or condition.

DON'T SUFFER!

For over 35 years thousands of discouraged men suffering with PROSTATES—KIDNEYS—BLADDER have obtained quick relief and fast build-up to Strength and Energy at a low daily cost of only a few cents. Get GLANCAPS Special 40 day treatment from your local Druggist, or mail \$3 direct to Darnell Drug Co., 1434 Concord, Indianapolis, Ind.

MEN Suffer Needlessly With PROSTATES—KIDNEYS—BLADDER

Regardless of age, or condition if you suffer with enlarged Prostate Glands, Kidney or Bladder irritation, break up congestion and cleanse the entire system with GLANCAPS SPECIAL FORMULA

A safe internal medication in capsule form proven effective in thousands of extreme cases.

"RID SYSTEM OF POISONS"

For a quick build-up to normal STRENGTH AND ENERGY

"RID SYSTEM OF POISONS"

If you suffer with PROSTATES—KIDNEY—BLADDER

For Men Who Suffer from swollen irritated Prostate Glands, Kidney, Bladder and Urinary Poisons. At the first sign of congestion, indicated by nervousness, backache, abdominal pains, leg ache and that tired, run-down feeling, * * *

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import not specifically set out herein, respondents represented that said product, used as directed, constitutes a competent and effective treatment for diseases of the prostate, kidneys, and bladder and will restore the normal functions of said organs when such functions are for any reason impaired; that its use will clear the entire system of poisons and particularly the prostate glands, kidneys, and bladder; that said product will build up the strength and energy of the user and is safe and harmless.

PAR. 6. The aforesaid 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, said product under either formula or according to either direction for use does not constitute a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder and will have no beneficial effect upon such diseases. It will not restore the functions of such organs to any extent. It will not clear the system or any part or organ thereof of poisons nor will it build up the strength and energy of the user. It is not a safe or harmless product to use.

PAR. 7. The advertisements designated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the said product to which the advertisements relate, under the conditions as are customary or usual. In truth and in fact, the Oil Santal (Albasantal), Oleoresin of Cubebs, Oil of Copaida (Copaiba), Rectified Turpene Oil, and Venice Turpentine are irritant diuretics and the use of this product in accordance with the directions or as is customary or usual is likely to result in serious and irreparable injury to kidneys which are injured or diseased and prolonged use of the product is likely to cause serious injury to normal kidneys.

PAR. 8. The use by the respondents of the trade name "Glancaps" is misleading and deceptive in that it serves as a representation that said product is of value in the treatment of various glands. In truth and in fact, the use of the product, as directed or otherwise, will have no beneficial effect upon any gland of the body.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations have had, and

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now have, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that the use of the product is safe and harmless, and to induce the purchasing public to purchase substantial quantities of respondents' said product because of such erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of the respondents, as alleged herein, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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 November 22, 1948, issued and subsequently served its complaint in this proceeding upon the respondents Wilbur F. Darnell and George W. Darnell, individually and trading as Darnell Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, at a hearing before a trial examiner of the Commission theretofore duly designated by it, respondent George W. Darnell, admitted in oral answer to the complaint all the material allegations of fact set forth in the complaint and waived further hearings as to the facts and all intervening procedure, and such answer, together with other testimony, was 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 as aforesaid, and testimony and recommended decision of the trial examiner (other intervening procedure having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Wilbur F. Darnell and George W. Darnell, individuals trading as Darnell Drug Co., for several years prior to the institution of this proceeding were engaged in the sale and distribution of a product designated "Glancaps," with their principal office and place of business at 1434 Concord Street, Indianapolis, Ind. Respondent Wilbur F. Darnell died on December 9, 1948.

PAR. 2. The formulae and their respective directions for use of the product Glancaps were as follows:

Formulae:

Albasantal.....	3 minims
Oleoresin of Cubebs.....	2 minims
Oil of Copaida (Copaiba).....	3 minims
Rectified Turpene Oil.....	2 minims
Extract Zea Mays.....	5 grains
and	
Oil Santal.....	2 minims
Salol.....	2 grains
Copaiba.....	3 minims
Venice Turpentine.....	2 minims
Oleoresin Cubeb.....	1 minim

Directions:

"One capsule every twenty-four hours with one half glass of water to be taken only at bedtime. Avoid alcoholic liquors."

"The minimum dose of Glancaps is one capsule every twenty-four hours, and should be taken only at bedtime. In extreme cases, or cases of long standing, two capsules may be taken and continued only until improvement is noted."

PAR. 3. Respondents have caused said product, when sold, to be transported from their place of business in Indianapolis, Ind., to purchasers thereof located in various other States of the United States. Respondents have maintained a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business for several years prior to the institution of this proceeding respondents in newspapers and otherwise have disseminated and caused the dissemination of advertisements concerning the product Glancaps by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Such advertisements were for the purpose of inducing and were likely to induce the purchase of said product in commerce, as "commerce" is defined in said act.

PAR. 5. The advertisements disseminated as aforesaid have represented that said product, used as directed, constitutes a competent and effective treatment for diseases of the prostate, kidneys, and bladder and will restore the normal functions of said organs when such functions are for any reason impaired; that its use will clear the entire system of poisons and particularly the prostate glands, kidneys, and bladder; that said product will build up the strength and energy of the user and is safe and harmless.

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PAR. 6. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. The product Glancaps, under either formula or according to either direction for use, does not constitute a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder and will have no beneficial effect upon such diseases. It will not restore the functions of such organs to any extent. It will not clear the system or any part or organ thereof of poisons nor will it build up the strength and energy of the user. It is not a safe or harmless product to use.

PAR. 7. Oil Santal (Albasantal), Oleoresin of Cubebs, Oil of Copaida (Copaiba), Rectifier Turpene Oil, and Venice Turpentine are irritant diuretics and the use of the product Glancaps in accordance with the directions or as is customary or usual is likely to result in serious and irreparable injury to kidneys which are injured or diseased and prolonged use of the product is likely to cause serious injury to normal kidneys. The said advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they have failed to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the said product under such conditions as are customary or usual.

PAR. 8. The use of the trade name Glancaps to designate said preparation has been misleading and deceptive in that it has served as a representation that said product is of value in the treatment of the various body glands. The use of the product as directed or otherwise will have no beneficial effect upon any gland of the body.

PAR. 9. The use by the respondent, George W. Darnell, of the foregoing false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that the use of the product is safe and harmless and to induce the purchasing public to purchase substantial quantities of the product designated as Glancaps because of such erroneous and mistaken beliefs.

CONCLUSION

The aforesaid acts and practices of the respondent George W. Darnell are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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, answer admitting all of the material allegations of fact set forth in the complaint and waiving further intervening procedure and hearings as to said facts, made orally by respondent George W. Darnell at a hearing in this proceeding before a trial examiner of the Commission theretofore duly designated by the Commission, testimony, and recommended decision of the trial examiner; 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 respondent George W. Darnell, individually and trading under the name of Darnell Drug Co., or any other name, and his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the product designated "Glancaps," 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 by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That said product is a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder, or will have any beneficial effect upon such diseases;

(b) That said product will restore the functions of the prostate gland, kidneys, or bladder;

(c) That said product will clear the human system or any organ or part thereof of poisons;

(d) That said product will build up the strength or energy of the user;

(e) That said product is safe and harmless.

2. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to reveal that the use of said product by persons having injured or diseased kidneys is likely to result in serious injury and that prolonged use thereof may cause serious injury to normal kidneys.

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3. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 above or which fails to comply with the requirements of paragraph 2.

4. Using in connection with the offering for sale or sale of any preparation in commerce the term "Glancaps," or any word or words of similar import or meaning, unless such preparation is of value in the treatment of the glands.

It appearing that Wilbur F. Darnell, named as a respondent in the complaint in this proceeding, died on December 9, 1948:

It is further ordered, That the complaint be, and it hereby is, dismissed as to Wilbur F. Darnell.

It is further ordered, That the respondent George W. Darnell, 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.

Complaint

IN THE MATTER OF
SETCHELL CARLSON, INC.

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

Docket 5639. Complaint, Feb. 18, 1949—Decision, Feb. 2, 1950

A substantial portion of the purchasing public is not able to, and does not, distinguish or recognize the difference between radio receiving tubes, which perform the primary function of detecting, amplifying, and receiving broadcast radio signals, and rectifiers or "rectifier" tubes, which perform only the auxiliary function of converting alternating current into direct current and which do not increase the power of a radio receiving set to detect, amplify, or receive broadcast radio signals; and believes that the power of a radio receiving set to detect, amplify, and receive broadcast radio signals is increased by the extent to which the number of tubes is increased.

Where a corporation engaged in manufacturing and assembling radio receiving sets, and in the interstate sale and distribution thereof to the purchasing public and to dealers; in advertising their sets through folders, price lists, pamphlets, circulars, and other advertising material—

Represented directly and by implication that some of said sets were equipped with five necessary, active and fully functioning tubes which performed the recognized and customary functions of radio receiving set tubes in detecting, amplifying, and receiving radio signals broadcast by radio transmitters, and that others of such sets were equipped with six such tubes, through such statements as "Five G. T. Tubes, Including Rectifier," "Six G. T. Tubes, Including Rectifier," and others of similar import;

The facts being that one or more of the devices in each of its sets referred to as a tube was not a radio receiving tube and did not perform the recognized and customary function of such a tube in detecting, amplifying, and receiving radio signals broadcast by a radio transmitter, but performed the auxiliary function of converting alternating current into direct current and was known as a rectifier or "rectifier tube," and did not increase the power of the set to detect, amplify, and receive broadcast radio signals;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and with effect of thereby inducing purchase by it of its said sets:

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

Mr. Charles S. Cox for the Commission.

Smith & Sehm, of St. Paul, Minn., 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