

Syllabus

IN THE MATTER OF

CONSOLIDATED ROYAL CHEMICAL CORPORATION;
TRADING ALSO AS CONSOLIDATED DRUG TRADE
PRODUCTS

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

Docket 5302. Complaint, Apr. 3, 1945—Decision, Sept. 21, 1950

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated as "New Pe-Ru-Na," and also as "New Pe-Ru-Na Tonic"; in advertisements thereof through radio continuities and by other means—

- (a) Falsely represented that the use of said preparation would build resistance to colds, prevent them and shorten their duration;
- (b) Represented that its use would be effective in relieving the symptoms of colds, and would relieve coughs, the facts being that its therapeutic value in relieving the symptoms or discomfort of a cold was limited to its expectorant qualities, which tend, in a slight degree, to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing; and
- (c) Represented that it would assist in building up the strength, energy, and vigor of the user because of its tonic properties; the facts being that it had no tonic properties which would accomplish such results, except to the extent that it might increase the appetite, and might, because of its iron and ammonium citrate content, aid slightly in correcting iron deficiency when taken for a considerable length of time;

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

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.

As respects the charge in the complaint that respondent's advertisements concerning its "Pe-Ru-Na" constituted false advertisements for the further reason that they failed to reveal facts material in the light of such representations or material with respect to the consequences which might result from its use under the prescribed or usual conditions, no evidence was introduced, and consequently no findings with respect thereto were made.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Elwood H. Seal, of Washington, D. C., *Nash & Donnelly*, of Chicago, Ill., and *Mr. Harlan W. Kelley*, of Milwaukee, Wis., for respondent.

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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 Consolidated Royal Chemical Corp., a corporation, trading under its own name and also under the name of Consolidated Drug Trade Products, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Consolidated Royal Chemical Corp. is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at 540-544 South Wells Street, Chicago, Ill. Respondent has been and is now trading under its own name and also under the name of Consolidated Drug Trade Products.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as New Pe-Ru-Na and also as New Pe-Ru-Na Tonic.

In the course and conduct of its business the respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois 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 said preparation 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 said business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation 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 dissemi-

nated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio continuities and by various other means, are the following:

Many users say it has helped them build the cold fighting resistance of their bodies, thereby often preventing or relieving colds and that this has often helped them go through whole winters without having a single bad cold. Others whose cold fighting resistance is strong say that when they get a cold it is so mild and short-lived that you could hardly call it a cold.

Friends, if you have coughs due to colds or congested breathing passages and chest discomforts also due to colds, remember to follow the example set by thousands all over the country and start taking the New Peruna right away to help relieve these discomforts of a cold. The new Peruna, you know, encourages the body to bring about an increased secretion from the various membranes of the respiratory tract which is nature's way of thinning congested secretions and thus loosening up the congestion. You know that when you have this congestion it is very annoying and uncomfortable. So if you have a cough due to a cold or congested breathing passages and chest discomforts due to a cold why not do as thousands in the same boat are doing and take the New Peruna. Remember also that thousands of folks who need an appetizing tonic also take the New Peruna to help build up their strength, energy and vigor.

You know thousands of folks take the new Pe-Ru-Na when they have a cold to help the body to loosen up the congestion of heavy secretions in the breathing passages which is nature's way of loosening up the cough, lessening the chest discomfort and relieving the congestion and discomfort of a cold. Many users say it has helped them as a tonic to build up their strength, energy and vigor.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning not specifically set out herein, respondent has represented and now represents that the use of said preparation will build resistance to cold; will prevent colds and shorten their duration: will be effective in relieving the symptoms of colds; will relieve coughs due to colds and will assist in building up the strength, energy and vigor of the user because of its tonic properties.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth, and in fact, the use of said preparation will not build resistance to, nor will it prevent a cold, or have any therapeutic value in the treatment of a cold or in shortening the duration thereof or in the treatment of the symptoms or discomforts of a cold, in excess of its mild expectorant qualities which tend, in a slight degree, to increase the exudate from the mucous membrane, thereby making it more liquid and more easily removed by coughing. Said preparation has no value in the treatment of coughs no matter how caused. It has only limited tonic properties and its use will assist in building up strength, energy and vigor only in the sense and to the extent that it may increase the appetite and thereby tend to increase the consumption of food.

PAR. 6. Respondent's advertisements, disseminated 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 preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. Respondent's said preparation contains potassium iodide. Iodine-containing preparations are potentially dangerous for use by persons having tuberculosis or a thyroid gland disease, and the continued use of this preparation by such persons may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency 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 into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief. Further, the failure of the respondent to disclose in its said advertising to those suffering from tuberculosis or a thyroid gland disease, has the tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that said medicinal preparation is entirely safe and harmless and may be taken by all persons without ill effects.

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 April 3, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Consolidated Royal Chemical Corp., a corporation trading under its own name and also under the name of Consolidated Drug Trade Products, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the 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 such testimony and other evidence were duly recorded and filed in the office of

the Commission. Thereafter this proceeding regularly came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner, to which no exceptions were filed, briefs in support of and in opposition to the complaint, and oral argument of counsel; 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, Consolidated Royal Chemical Corp. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 540-544 South Wells Street, Chicago, Ill. Respondent has been and is now trading under its own name and also under the name of Consolidated Drug Trade Products.

PAR. 2. Respondent is now, and for more than 2 years last past has been engaged in the sale and distribution of a certain medicinal preparation designated as New Pe-Ru-Na and also as New Pe-Ru-Na Tonic.

In the course and conduct of its business, respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois 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 course of trade in said preparation 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 said business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation 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 hereinabove set forth, by

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the United States mails, by radio continuities, and by various other means, are the following:

SENSATIONAL
NEW PERUNA
HELPS BUILD COLD
FIGHTING RESISTANCE
TO HELP PREVENT AND
WIN FIGHTS
WITH COLDS!

Well, old man winter is in the air, tryin' his very best to give a bad cold to everybody whose cold-chasin' resistance isn't as strong as it should be. You know, thousands of folks take the New Peruna as a tonic to help build up their cold-fighting resistance. So many thankful people now praise Peruna, because you see, its purpose is to help build cold-fighting resistance, which is often just the thing needed to prevent and relieve colds, before they get you all worn out. Many users say it has helped them to build the cold-fighting resistance of their bodies, thereby often preventing or relieving colds, and that this has often helped them go through whole winters without having a single bad cold. Others whose cold-fighting resistance is strong, say that when they get a cold, it is so mild and short-lived that you can hardly call it a cold. So try Peruna. * * *

Friends, if you have coughs due to colds or congested breathing passages, and chest discomforts also due to colds, remember to follow the example set by thousands all over the country and start taking the New Peruna right away to help relieve these discomforts of a cold. The New Peruna, you know, encourages the body to bring about an increased secretion from the various membranes of the respiratory tract, which is nature's way of thinning congested secretions and thus loosening up the congestion. You know that when you have this congestion it is very annoying and uncomfortable. So, if you have a cough due to a cold or congested breathing passages and chest discomforts due to a cold, why not do as thousands in the same boat are doing and take New Peruna? Remember also, that thousands of folks who need an appetizing tonic also take the New Peruna to help build up their strength, energy, and vigor. * * *

Well, that old chilliness is often in the air at night and sometimes even in the day, tryin' its very best to give a cold to everybody. You know, thousands of folks take the new Peruna when they have a cold, to help the body to loosen up the congestion of heavy secretions in the breathing passages which is nature's way of loosening up the cough, lessening the chest discomfort, and relieving the congestion and discomfort of a cold. So many thankful people who needed an appetizing tonic now praise Peruna, because you see, its purpose as a tonic, is to help build up strength, energy, and vigor. As a medicine, when they have a cold, they praise the new Peruna because it helps the body loosen up the congestion of heavy secretions in the breathing passages, which often loosens up the cough, and lessens the chest discomforts—often just the thing needed to relieve the discomfort of a cold before it gets you all worn out. Many users say it has helped them, as a tonic, to build up their strength, energy, and vigor, and also, as a medicine, has helped them to loosen up the congestion of colds, and such loosening up of the congested secretions in the breathing passages often loosens up the

cough, lessens the chest discomforts, and relieves discomforts of colds. Why don't you try the new Peruna? * * *

Other advertisements similar to the last two quoted above were disseminated in the same manner during 1946 and 1947.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning not specifically set out herein, respondent has represented and now represents that the use of said preparation will build resistance to colds; will prevent colds and shorten their duration; will be effective in relieving the symptoms of colds; will relieve coughs due to colds, and will assist in building up the strength, energy, and vigor of the user because of its tonic properties.

PAR. 5. The formula by which Pe-Ru-Na was made in 1944, and the directions for its use accompanying that preparation, are as follows:

Peruna—1944 Formula

Ingredient	Per 7,863 gallons	Per fluid-ounce	Per tablespoonful
S. E. cascara sagrada.....	19 pounds 12 ounces.....	0.14 grain.....	0.07 grain.
S. E. boneset.....	71 pounds 8 ounces.....	0.5 grain.....	0.25 grain.
S. E. gentian.....	30 pounds 6 ounces.....	0.21 grain.....	0.11 grain.
Extract licorice.....	53 pounds 3 ounces.....	0.37 grain.....	0.19 grain.
Oil copaiba.....	9 pounds.....	0.06 grain.....	0.03 grain.
Potassium iodide.....	300 pounds.....	2.09 grains.....	1.04 grains.
Saccharin insoluble.....	9 pounds.....	0.06 grain.....	0.03 grain.
Sodium bicarbonate.....	79 pounds 1 ounce.....	0.55 grain.....	0.27 grain.
Iron and ammonium citrate.....		3.0 grains.....	1.5 grains.
Oleoresin ginger.....	5 pounds 6 ounces.....	0.037 grain.....	0.018 grain.
Malt syrup.....	10,674 pounds.....	74.3 grains.....	37.15 grains.
Alcohol ethyl U. S. P.....	1,242 gallons.....	75.8 minims.....	37.9 minims.
Water q. s. ad.....	7,863 gallons.....	q. s.....	q. s.

*Iron and ammonium citrate content given in grains per fluid ounce, p. 42 of transcript.

DIRECTIONS

Adults: Take one tablespoonful before each meal and at bedtime. Delicate persons should commence with a teaspoonful in a little water before each meal and at bedtime.

Children—5 to 10 years old: Thirty drops to a teaspoonful. Do not give to children under 5 years of age.

Caution: If skin rash occurs discontinue the use of the product. See that the bottle is kept well closed and in a cool place, when not in use.

For coughs due to colds, adults take two tablespoonfuls every hour for six hours each day for two days.

The 1939 formula for Pe-Ru-Na contains, among other ingredients:

	Per fluid ounce	Per tablespoonful
Iron and Ammonium Citrate.....	3 grains.....	1.5 grains
Potassium Iodide.....	1 grain.....	0.5 grain

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In the 1941 formula these ingredients appear as:

	<i>Per fluid ounce</i>	<i>Per tablespoonful</i>
Iron and Ammonium Citrate.....	3.06 grains.....	1.53 grains
Potassium Iodide.....	1.01 grains.....	0.50 grain

And in the 1946 formula these amounts have been increased to:

	<i>Per fluid ounce</i>	<i>Per tablespoonful</i>
Iron and Ammonium Citrate.....	4.72 grains	2.36 grains
Potassium Iodide.....	2.09 grains	1.04 grains

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. A cold is an acute infection of the upper respiratory tract, resulting in inflammation of the infected area. The common symptoms of a cold are the pouring out of secretions in the nose and upper bronchial tree, a cough, a general feeling of malaise, sore throat, headache, chest discomfort, and in some cases an elevation of temperature and diarrhea. The taking of Pe-Ru-Na in accordance with the directions for its use will not build resistance to a cold, prevent a cold, shorten the duration of a cold, or have any therapeutic value in the treatment of a cold. Its therapeutic value in relieving the symptoms or discomforts of a cold is limited to its expectorant qualities, which tend, in a slight degree, to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing. Said preparation does not have any tonic properties which will build up strength, energy, and vigor, except to the extent that it may increase the appetite, thereby tending to increase the consumption of food, and to the extent that it may, because of its iron and ammonium citrate content, aid in a slight degree to correct iron deficiency in the system when taken for a considerable length of time.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency 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 into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

PAR. 8. The complaint charged also that respondent's advertisements concerning its product Pe-Ru-Na 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 preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual. No evidence with respect to this

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charge was introduced, and consequently no findings with respect thereto have been made.

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, answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and briefs and oral argument of counsels; 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, Consolidated Royal Chemical Corp., 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 preparation designated New Pe-Ru-Na and New Pe-Ru-Na Tonic, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement, by the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication:

a. that said preparation will build resistance to a cold, prevent a cold, shorten the duration of a cold; or have any therapeutic value in the treatment of a cold;

b. that said preparation will have any therapeutic value in relieving the symptoms or discomforts of a cold in excess of its expectorant qualities, which tend in a slight degree to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing;

c. that said preparation will assist in building up strength, energy, or vigor, except and to the extent that its use may (1) increase the appetite and thereby tend to increase the consumption of food, and

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(2) by supplying some iron, aid in a slight degree to correct iron deficiency, if taken over a long period of time.

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 respondent's said preparation, which advertisement contains any of the representations prohibited in this order.

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.

Complaint

IN THE MATTER OF

WALSH LABORATORIES, INC., ET AL.

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

Docket 5665. Complaint, June 17, 1949—Decision, Sept. 21, 1950

Where a corporation and the two officers who controlled it, engaged in the interstate sale and distribution of a product which they designated as "Rodan"—

- (a) Represented in advertisements thereof in newspapers and circulars, on letterheads and other advertising material, that said preparation was an effective killing agent for mice and all varieties of rats, and would destroy the rats on infested premises; the facts being that it was not such an agent except for brown rats, and could not be depended upon to destroy all the rats, or even all brown rats, on infested premises;
- (b) Represented falsely, as aforesaid, that the use of the product was completely safe and would not harm domestic animals or poultry;
- (c) Falsely represented through the use of the words "manufacturing chemists" in connection with their corporate name, that they manufactured or compounded chemicals and employed chemists in connection with their business;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their said product and their business status, and thereby induce the purchase by it of substantial quantities of said product:

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

Before *Mr. William L. Pack*, trial examiner.

Mr. B. G. Wilson 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 Walsh Laboratories, Inc., a corporation, John J. Walsh and Henry E. Staffel, individually and as officers of Walsh Laboratories, Inc., a corporation, 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. Respondent Walsh Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois. John J. Walsh is president and treasurer and Henry E.