

Syllabus

IN THE MATTER OF
THE WANDER CO.

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

Docket 5316. Complaint, May 11, 1945—Decision, Aug. 16, 1951

While a significant prevalence of undernutrition among the people of the United States has been reported in official United States Government publications in the past, the statement that three out of four are undernourished is not justified, the facts being that the present extent of such undernutrition is indeterminate, and that the present state of knowledge of nutrition does no permit an accurate statistical statement of the specific percentage of people in the United States who are undernourished.

Where a corporation engaged in the interstate sale and distribution of its "Ovaltine" food preparation; through advertisements in newspapers, periodicals, radio broadcasts, and in other ways, directly and by implication—

- (a) Falsely represented that the consumption of Ovaltine would reduce the emptying time of the stomach after a starchy meal and thereby induce the return of hunger more quickly;
- (b) Represented falsely that its consumption would increase weight, correct nervous conditions, preserve and assure strength and health and stimulate appetite;
- (c) Represented that people who were under par, run-down, thin, tired, underweight, or lacking in energy or strength suffered such conditions because of vitamin and mineral deficiencies, which could be corrected and eliminated by the use of Ovaltine; and that consumption thereof would significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency;

The facts being that such symptoms are not always or generally caused by mineral or vitamin deficiency; when so caused said preparation would not constitute an adequate treatment therefor except in the milder forms, in which continued use over a long period of time might be of benefit; and in severe cases of deficiency, such as beri beri, pellagra, and scurvy, the vitamin and mineral content thereof was insufficient to produce any beneficial effect;

- (d) Represented that the use of Ovaltine as directed would correct iron deficiency anemia and its symptoms; and that loss of appetite was due to lack of vitamin B₁, which Ovaltine supplied in sufficient quantities to correct.

The facts being that while consumption thereof in the quantities recommended might prevent, it would not cure iron deficiency anemia or its symptoms; and while it would supply slightly more than the minimum daily requirement of vitamin B₁, loss of appetite—while it may result from a lack of such vitamin—is more frequently caused by illnesses which have no relation with such a deficiency;

- (e) Represented that three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness;

Notwithstanding the fact that the present state of knowledge of such matters did not permit an accurate statistical statement with regard thereto;

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- (f) Represented that Ovaltine aided in digesting milk and starchy foods and that it contained a variety and scope of food elements not to be found in any other food product;

The facts being that its use in conjunction with milk as directed would not aid in such digestion except to the extent that it might serve to speed digestion of such foods; and there were other food products on the market which contained the same variety of nutriment;

- (g) Represented that use thereof would enable one to successfully fight off colds and sore throat, and would assure good eyesight;

The facts being that it had no value as a treatment for or preventive of colds or sore throat; and no effect upon one's eyesight in the daytime or in artificial light; though, consumed over a prolonged period of time, it might prevent night blindness resulting from vitamin A deficiency, or serve to avoid a narrowing of the field of vision resulting therefrom;

- (h) Represented that health and well-being required vitamins and minerals in addition to the supply thereof contained in a well-balanced diet, and that nightly consumption of Ovaltine would enable one to wake up in morning feeling fresh, vigorous, and buoyant;

The facts being that a well-balanced diet provides a person with all the vitamins and minerals required for his physical well-being, and the addition of Ovaltine to such a diet would have no effect whatever upon the consumer's health; and while its use might be beneficial before retiring in producing sound sleep, it would not assure one of waking up in the morning feeling fresh and buoyant; and

- (i) Represented falsely that two glasses of Ovaltine daily added to three average good meals would assure excellent health, and that it could be depended upon to assist in providing extra endurance, strength, stamina and energy, would build muscles, and constitute an all-round strengthening food:

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. Abner E. Lipscomb*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Isaac W. Digges, 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 The Wander Co., 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, The Wander Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and head-

quarters located at 360 North Michigan Avenue, in the city of Chicago, Ill., and a factory in Villa Park, Ill.

PAR. 2. This respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of a food preparation designed to be consumed as a beverage and designated as Ovaltine.

Respondent causes the aforesaid preparation Ovaltine when sold, to be transported from one or the other of its said places of business in the State of Illinois to the purchasers thereof 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 aforesaid preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In furtherance of the sale and distribution of its aforesaid preparation Ovaltine 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; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements 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 and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by insertions in newspapers, magazines, and other periodicals, by means of leaflets, pamphlets, and circulars, and by radio continuities, are the following:

. . . These X-Rays show two stomachs 2 hours after a starchy meal. Notice that one stomach is nearly empty due to the way OVALTINE is helping to digest the starch. WHEN A CHILD'S STOMACH EMPTIES SOONER, HUNGER CAN RETURN QUICKER.

NEW IMPROVED OVALTINE FOR THE CHILD WHO IS THIN, NERVOUS OR UNDERWEIGHT

. . . it gives children an extra supply of food elements they've got to have to keep really strong and healthy and have good appetites.

. . . The way he's polishing off those vegetables you'd never believe what struggles we used to have trying to make him eat.

Ovaltine has always been the source of the precious vitamins A, B, D and G and the minerals calcium, phosphorus and iron. . . .

. . . if your child tends to be thin or under par—we urge you to start giving him new, enriched Ovaltine.

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... Ovaltine contains Vitamin B, without which good appetite cannot exist. It also aids in the digestion of starchy foods and makes milk more digestible.

... Ovaltine should never be confused with preparations which serve as mere flavoring for milk. It is a scientific food concentrate containing a variety and scope of food elements not found in any other single food product in the entire world, so far as we know.

... When a child is tired, Ovaltine provides quick-acting energy in a form that gets into the blood stream rapidly.

SPRINGTIME AGAIN

for Susan

She was fagged and under par, looking old before her time . . .

RUNDOWN, THIN or EXHAUSTED

If so, don't fail to try new improved Ovaltine.

If you seem to be aging too rapidly—If your freshness and sparkle seem to be steadily slipping away—here's important news . . . you may be suffering from a shortage of Vitamin A that's needed for resistance to disease. Or from a lack of Vitamin B that's so essential for healthy nerves. Or a lack of iron may be impoverishing the blood, making you listless, pale and weak.

... When you feel exhausted and fagged out, it may be because you are temporarily short on certain food elements needed to keep the blood sugar reserves at a proper level. This is a common cause of tiredness and fatigue.

... Ovaltine is high in nutritive value . . . clinical tests show it increases the energy fuel in the blood in as little as 15 minutes—thus helping to ward off attacks of fatigue.

So, if you tire easily—if you feel nervously fagged and rundown—try taking the new, improved Ovaltine three times a day, including a cup at bedtime as an aid to restful sleep—and to rebuild vitality, while you sleep.

DON'T WORRY

ABOUT IRON

Without iron, you can't have good red blood. Ovaltine supplies all the extra iron you need—in the way you can use it.

DON'T WORRY

About

VITAMIN A

... You need it to fight off colds, for good eyesight. With Ovaltine you get all the extra "A" you need.

DON'T WORRY

About

VITAMIN B₁

You eat poorly—and you're tired, listless, nervous, "low"—if you don't get enough B₁. The Ovaltine way you get plenty!

Government authorities say today that 3 out of 4 people are under par—sub-marginal—nervous, underweight, easily fatigued—even well-fed people—because they don't get enough vitamins and minerals! Result, millions of people taking pills!

... Thousands of tired, nervous people and thin, underweight children have shown remarkable improvement in health when Ovaltine is added to their regular meals

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WARNING

Authorities say you can't completely trust good meals to supply all the vitamins and minerals you need for good health—even with careful meal-planning.

Many children eat poorly because they don't get enough of the appetite Vitamin B₁—which Ovaltine supplies.

... With a glass of Ovaltine added to each meal, you don't have to worry—your child's practically certain to get all of these food elements he needs for hearty appetite, sturdy growth, sound nerves—for vigorous, glowing health.

... Results are often so remarkable when Ovaltine is added to the daily diet of those who are thin, nervously exhausted, under par or who are lacking in energy ... Ovaltine ... often produces such surprising changes in growing children who can't seem to build up naturally and lack normal appetite.

Vitamin A is essential to maintain resistance against infections. If you don't get enough of it, you become much more susceptible to sore throats and colds.

When you don't get enough iron you become pale and listless and tire easily. When there has been a shortage of iron in the diet, an additional supply usually has a very noticeable "tonic effect." Healthy color returns to the face—and the feeling of listlessness is rapidly dispelled. Ovaltine not only furnishes a rich supply of available iron, but also contains an important companion mineral that provides the "booster action" needed for complete utilization of iron.

Remarkable results have been reported, especially in the case of children who were thin—or nervous and underweight. ... One mother reports that her child gained 5 lbs. in five weeks after she started giving her Ovaltine. Another mother reports a 6 lb. gain in seven weeks. And still another mother writes that her son put on 12 lbs. in only six weeks' time.

New improved Ovaltine ... can make a significant contribution ... in the correction as well as the prevention of subnutritional states.

If you drink just two glasses of Ovaltine, a day, and add three average good meals, including fruit juice, you will be getting all the extra vitamins and minerals any normal person needs for tip-top health! So if you're doing a job that's vital to victory—if you're working hard, and want to keep on working, feeling right up to your best in vigor and vitality, why not try this modern Ovaltine way of getting all the extra vitamins and minerals you need?

Well, folks, this is war! And whatever your part may be you're probably working harder at it than you have ever worked before. Whether you are in business, on the farm or in a war plant ... whether you are wearing a uniform, running a war-time home or going to school—whatever you are doing, you are undoubtedly feeling—as we all are—the added pressure of war-time living! To withstand this pressure ... we must have the foods that give us energy, staying power and also the important vitamins and minerals so very essential to good health. Now isn't it good to know that you can rely on Ovaltine as an aid to extra endurance for these strenuous times! Extra strength for your harder war-time work—added stamina to keep you at your best for your job! Thousands today in important jobs are finding Ovaltine helps to carry them through the day and get more work done! Gives them extra energy to ward off fatigue ... Ovaltine is a highly nourishing, all-around strengthening food. ... Ovaltine is not only rich in quick-acting food energy—but also provides important protein for muscle building.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of the same import but not spe-

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cifically set out herein, respondent represents and has represented, directly and by implication, that the consumption of Ovaltine will reduce the emptying time of the stomach after a normal meal and thereby induce hunger more quickly; that the consumption of Ovaltine will increase weight, correct nervous conditions, preserve and assure strength and health, and stimulate one's appetite; that persons who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight and lacking in energy, suffer such symptoms and conditions because of vitamin and mineral deficiencies which can be corrected by the use of Ovaltine, thus eliminating the said symptoms and conditions; that the use of Ovaltine, as directed, will correct iron deficiency anemia and its resultant symptoms; that the loss of appetite is due to a lack of vitamin B₁, which Ovaltine supplies in sufficient quantities to correct; that three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness; that Ovaltine aids in digesting milk and starchy foods; that Ovaltine contains a variety and scope of food elements not to be found in any other food product; that the use of Ovaltine will enable one to successfully fight off colds and sore throat, and will assure good eyesight; that human health and well-being require vitamins and minerals in addition to the supply thereof obtained in a well-balanced diet; that the nightly consumption of Ovaltine will enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant; that the consumption of Ovaltine will significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency; that two glasses of Ovaltine daily added to three average good meals, including fruit juices, will assure excellent health, and Ovaltine can be depended upon to assist in providing extra endurance, strength, stamina, and energy, will build muscles, and constitutes an all-round strengthening food.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, deceptive, and misleading. The consumption of Ovaltine will not reduce the emptying time of the stomach after a normal meal, and will neither induce nor aid in inducing hunger more quickly; it will not increase weight; it will not correct or improve nervous conditions; it will not preserve and assure strength and health; it will not stimulate one's appetite.

Persons under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, and lacking in energy, do not usually develop such symptoms and conditions because of vitamin and mineral deficiencies, but such conditions and symptoms most frequently occur as a result of some disease which bears no relationship

whatever to vitamin or mineral deficiency, and which can not be corrected or relieved by the administration of vitamins and minerals in any dosages. Moreover, the amounts of vitamins and minerals provided in Ovaltine, taken as directed, are insufficient to correct or relieve deficiencies and their attendant symptoms and conditions. Ovaltine, taken as directed, will not correct iron deficiency anemia and its resultant symptoms, and will provide only the minimum daily nutritional requirement of iron, which is only a very small fraction of the quantity of iron necessary to correct iron deficiency anemia or to have a "tonic effect" in such cases.

Although vitamin B₁ deficiency may be the cause of a poor appetite, nevertheless, loss of appetite is a manifestation of a wide variety of diseases and other conditions which are in no way related to vitamin B₁ deficiency and which cannot be corrected by the administration of vitamin B₁ in any amounts. Furthermore, the amount of vitamin B₁ furnished by the recommended daily intake of Ovaltine is not sufficient to correct any of the symptoms of vitamin B₁ deficiency, including loss of appetite.

Three out of four people in this country have not developed symptoms such as fatigue, under par, underweight, and nervousness, as a result of vitamin or mineral deficiencies, nor has any other large proportion of our population.

Chronic conditions of underweight do not usually arise from mere failure to ingest sufficient calories, but are usually a manifestation of some long-standing conditions which cannot be remedied by the administration of Ovaltine or the food products contained therein; and even in the relatively few cases of individuals who are underweight because of failure to ingest enough calories, the addition of Ovaltine to the diet would not enable them to gain weight at any predeterminable rate.

Ovaltine does not aid in digesting milk, which is digested practically in toto on the normal schedule provided by nature in the gastrointestinal tract, regardless of whether or not Ovaltine is added. Digestion of starches is not one of the primary functions of the stomach; there are comparatively few individuals who do not experience an entirely adequate and orderly digestion of starches, and any assistance which the ingestion of Ovaltine may render in digesting starches is of little or no practical value.

There are other manufactured food products on the market containing all of the nutrients found in Ovaltine. The use of Ovaltine will not enable one to successfully fight off colds and sore throat, and the consumption of Ovaltine, either by reason of its vitamin A content, or otherwise, will not prevent the incidence of or shorten the duration of

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the common cold or accompanying sore throat. Although one of the characteristic effects of vitamin A deficiency is a visual impairment under dim lighting or twilight conditions, yet no such impairment is suffered under ordinary lighting conditions, and the administration of Ovaltine will not assure good eyesight nor improve the eyesight in the customary usage of that word. Human health and well-being do not require vitamins and minerals in addition to the supply thereof obtained in a well-balanced diet; on the other hand, the selection and consumption of ordinary foodstuffs will assure an adequate nutritional intake of vitamins and minerals for the promotion and maintenance of health; in addition, there are numerous causes of lack of vigor and health which have nothing to do with nutrition and the food ingredients of Ovaltine.

The nightly consumption of Ovaltine will not enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant, but might serve to induce sleep in some people, just as hot milk might do, and if such consumers awaken refreshed, it is not the result of any specific effect the Ovaltine may have had on the digestive processes, or on any other function of the body, but would be due solely to a good night's rest. Ovaltine, taken as directed, does not provide enough vitamins or minerals to correct subnutritional states resulting from vitamin or mineral deficiencies. Two glasses of Ovaltine daily, or any amount, added to three average good meals, including fruit juices, will not assure excellent health, and Ovaltine, imbibed as directed, will not assist in providing extra endurance, strength, stamina, and energy; it will not build muscles, and it is not an all-round strengthening food. It will not serve to increase one's physical strength, nor will it increase one's energy reserve in the sense of increasing his capacity for physical exertion or in any other manner which could not equally as well be fulfilled by any food substance of equivalent caloric value.

PAR. 6. The use by respondent of the aforesaid false, deceptive, and misleading statements and representations, and others similar in import and meaning not specifically set forth herein, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

PAR. 7. 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated August 16, 1951, the initial decision in the instant matter of trial examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 11, 1945, issued and subsequently served its complaint in this proceeding upon respondent, The Wander Co., a corporation, charging it with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested, and a proposed order to cease and desist having been agreed to by counsel, with the proviso that if it were not acceptable to the trial examiner or to the Commission, the proceeding would be placed in status quo and hearings resumed. The said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Wander Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and headquarters located at 360 North Michigan Avenue, Chicago, Ill., and a factory in Villa Park, Ill.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a food preparation designed to be consumed as a beverage, and designated as "Ovaltine."

Findings

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PAR. 3. Respondent's said product, Ovaltine, is a homogeneous food supplement processed from barley malt, whole milk, defatted milk, soya flour, whole eggs, selected cocoa, vitamin A, vitamin B₁ (thiamine), vitamin C, vitamin D, riboflavin (vitamin G), niacin and calcium, phosphorus, readily available iron, salt, and artificial flavoring.

The nutritional content of nine heaping teaspoonfuls, or 1½ ounces, of Ovaltine, which is the amount recommended to be taken per day, in approximately three 8-ounce glasses of milk, is approximately as follows:

Calories.....	636.4
Protein.....	31.0 gm.
Carbohydrate.....	61.9 gm.
Fat.....	29.3 gm.
Calcium.....	1,093 mgm.
Phosphorus.....	893 mgm.
Iron.....	13.3 mgm.
Vitamin A.....	3,794 international units.
Thiamine.....	1.38 mgm.
Riboflavin.....	2.06 mgm.
Vitamin C.....	43.0 mgm.
Vitamin D.....	412 international units.
Niacin.....	8.13 mgm.

The amount of these nutritional factors which Ovaltine supplies per day to the total combination are:

Calories.....	168.4
Protein.....	7.2 gm.
Carbohydrate.....	28.6 gm.
Fat.....	2.8 gm.
Calcium.....	289 mgm.
Phosphorus.....	260 mgm.
Iron.....	12.9 mgm.
Vitamin A.....	2,714 international units.
Thiamine.....	1.14 mgm.
Riboflavin.....	0.89 mgm.
Vitamin C.....	34 mgm.
Vitamin D.....	400 international units.
Niacin.....	7.38 mgm.

The minimum daily requirements of the pertinent nutrients above-mentioned are as follows:

	Adult	Child	Infant
Vitamin A.....	4,000 units	3,000 units	1,500 units
Vitamin D.....	400 units	400 units	400 units
Vitamin B ₁	1.0 mg.	0.5-0.75 mg.	0.25 mg.
Vitamin C.....	30 mg.	20 mg.	10 mg.
Riboflavin.....	2.0 mg.	-----	0.5 mg.
Calcium.....	750 mg.	750 mg.	-----
Phosphorus.....	750 mg.	750 mg.	-----
Iron.....	10 mg.	7.5-10 mg.	-----

The term "minimum daily requirement" means a figure sufficient in quantity to supply enough of the respective vitamins or minerals to prevent any deficiency, and to provide some measure of safety, but which is not adequate in undertaking to treat a deficiency.

Directions for using Ovaltine, as shown on the label, are as follows:

Hot Ovaltine—stir 3 heaping teaspoonfuls of Ovaltine into a cup of hot (not boiled) milk. Add sugar to taste. As a bedtime drink, use 3 or more heaping teaspoonfuls. Cold Ovaltine—add 3 or more heaping teaspoonfuls of Ovaltine to a glass of ice-cold milk. Add sugar to taste. Shake in a shaker or covered jar or use a mixer.

PAR. 4. Respondent causes its said food preparation, Ovaltine, 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, and maintains, and at all times mentioned herein has maintained, a course of trade in its said food preparation, Ovaltine, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business, the respondent has been and is responsible for the dissemination, by the United States mails, by insertions in newspapers, magazines, and other periodicals having national circulation, by radio broadcasts, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning its food preparation, Ovaltine, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of such food preparation in commerce, which advertisements represent or have represented, directly and by implication, that:

1. The consumption of Ovaltine will reduce the emptying time of the stomach after a starchy meal, and thereby induce the return of hunger more quickly;

2. The consumption of Ovaltine will increase weight, correct nervous conditions, preserve and assure strength and health, and stimulate one's appetite;

3. People who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight or lacking in energy or strength, suffer such symptoms and conditions because of vitamin and mineral deficiencies which can be corrected by the use of Ovaltine, thus eliminating such symptoms and conditions;

4. The use of Ovaltine, as directed, will correct iron deficiency anemia and its resultant symptoms;

5. The loss of appetite is due to a lack of vitamin B₁, which Ovaltine supplies in sufficient quantities to correct;

6. Three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness;

7. Ovaltine aids in digesting milk and starchy foods;

8. Ovaltine contains a variety and scope of food elements not to be found in any other food product;

9. The use of Ovaltine will enable one to successfully fight off colds and sore throat, and will assure good eyesight;

10. Human health and well-being require vitamins and minerals in addition to the supply thereof obtained in well-balanced diet;

11. The nightly consumption of Ovaltine will enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant;

12. The consumption of Ovaltine will significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency;

13. Two glasses of Ovaltine daily added to three average good meals, including fruit juices, will assure excellent health;

14. Ovaltine can be depended upon to assist in providing extra endurance, strength, stamina, and energy, will build muscles, and constitutes an all-round strengthening food.

PAR. 6. The statements and representations disseminated and caused to be disseminated by the respondent, as set forth in paragraph 5, above, are exaggerated, false, and misleading.

In truth and in fact, the consumption of Ovaltine will not reduce the emptying time of the stomach after a starchy meal, and will not thereby induce the return of hunger more quickly.

Symptoms such as being under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, or lacking in energy or strength are not always caused by mineral or vitamin deficiencies, although such deficiencies may contribute thereto. When such symptoms are caused by vitamin or mineral deficiencies, Ovaltine will not constitute an adequate treatment therefor because the vitamin and mineral content of said product is insufficient for an effective dosage, except in the milder forms of vitamin and mineral deficiency, wherein the continued use of Ovaltine over a long period of time may be of benefit. In severe cases of vitamin and mineral deficiency, such as beri-beri, pellagra and scurvy, the vitamin and mineral content of Ovaltine is insufficient to produce any significant beneficial effect.

The consumption of Ovaltine in the quantities recommended may prevent, but will not cure, iron deficiency anemia or its resulting symptoms. Although Ovaltine will supply slightly more than the minimum daily requirement of vitamin B₁, loss of appetite, while it may result

from a lack of this vitamin, is more frequently caused by many diseases and illnesses, both mild and severe, which have no relationship with a vitamin B₁ deficiency.

Although a significant prevalence of undernutrition among the people of the United States has been reported in official United States Government publications in the past, such undernutrition as has existed has not justified the statement that three out of four, or 75 percent, of the people of the United States are undernourished. The present extent of such undernutrition is indeterminate, and the present state of knowledge of nutrition does not permit an accurate statistical statement of the specific percentage of people in the United States who are undernourished.

The use of Ovaltine in conjunction with milk as directed will not aid in the digestion of milk or starchy foods, except to the extent that it may serve to speed the digestion thereof.

There are other food products on the market which contain the same variety of nutriments found in Ovaltine.

Ovaltine has no value as a treatment for colds or sore throat, nor will it prevent such infections, nor have any tendency to shorten the duration thereof.

Vitamin A deficiency is one of the causes of night blindness, but night blindness has no effect upon one's eyesight in the daytime or in artificial light. Ovaltine, consumed over a prolonged period of time, may prevent night blindness resulting from vitamin A deficiency, or may serve to avoid a narrowing of the field of vision resulting from such a deficiency, but will have no other effect upon human eyesight.

A well-balanced diet provides a person with all the vitamins and minerals required for his physical well-being, and the addition of Ovaltine to such a diet will have no effect whatever upon the consumer's endurance, energy, muscles, strength, and stamina.

Although the use of Ovaltine before retiring may be beneficial in producing sound sleep, such use will not assure one of waking up in the morning feeling fresh, vital, vigorous, and buoyant.

Ovaltine, consumed alone or in connection with a well-planned diet, cannot assure sound health, and cannot be depended upon to assist in providing, building or developing extra endurance, strength, stamina, health, energy, or muscles, nor will it constitute an all-round strengthening food.

CONCLUSION

The foregoing 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

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ORDER

It is ordered, That the respondent, The Wander Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of Ovaltine, or any product of substantially similar composition or possessing substantially similar 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:

(a) That the consumption of Ovaltine will reduce the emptying time of the stomach after a starchy meal, or will thereby induce hunger.

(b) That the use of Ovaltine, by those who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, or lacking in energy or strength, or whose appetites are impaired, will correct such conditions or other symptoms of nutritional deficiencies unless such representations are limited to those cases in which such conditions are due to the milder forms of nutritional deficiencies where the prolonged and continued use of said product as a food supplement in the quantities recommended may tend to overcome such conditions. Nothing contained herein shall be deemed to permit respondent to represent that the use of Ovaltine will correct clear-cut deficiency disease states such as, but not limited to, beri-beri, pellagra, or scurvy.

(c) That three out of four or any other specific portion of the people of this country are so deficient in vitamins and minerals that they have developed such symptoms as being under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, or underweight, or lacking in energy and strength or whose appetites are impaired, or any other symptoms which arise by reason of lack of sufficient vitamins or minerals: *Provided, however,* That the foregoing shall not be construed to prevent the respondent from using representations accurately reflecting statements made in current documents issued by agencies of the United States Government whose functions and duties include nutritional studies and surveys bearing upon the prevalence among the people of this country of symptoms arising by reason of mineral or vitamin deficiency.

(d) That the use of Ovaltine will correct iron deficiency anemia and its resultant symptoms.

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Order

(e) That Ovaltine will aid in the digestion of milk or starchy foods, except to the extent that it may serve to speed the digestion thereof.

(f) That no other food product on the market contains the same variety of nutriments found in Ovaltine.

(g) That the use of Ovaltine will have any effect in avoiding colds or sore throat or will exert any influence upon the severity or duration of the common cold or its accompanying sore throat; or that its use will have any effect upon the eyesight in excess of preventing night blindness resulting from vitamin A deficiency, or preventing narrowing of the field of vision resulting from vitamin A deficiency.

(h) That the health of an individual who consumes a well-planned or well-balanced diet requires additional vitamins or minerals, such as may be found in Ovaltine, or any other food supplement, or that Ovaltine, added to such a diet, will assist in providing, building, or developing endurance, strength, stamina, energy, or muscles, or act as an all-round strengthening food, or increase one's strength.

(i) That by taking Ovaltine before retiring one can be assured of feeling fresh, vigorous, vital or buoyant the next morning.

(j) That the consumption of Ovaltine will give assurance of good health.

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 Ovaltine, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of August 16, 1951].

Complaint

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IN THE MATTER OF

DANIEL HUTTNER, DOING BUSINESS AS SANITARY
FEATHER CO.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5874. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951*

Where an individual engaged in the interstate sale and distribution of pillows—
Represented that certain pillows were composed entirely of duck down and that
such down was new and unused material, through such statements on the
labels attached thereto as "All New Material Consisting of Duck Down" or
"All New Material Consisting of Imported Duck Down";

The facts being that four pillows thus labeled were found to contain only 70.5,
72.2, 69.1, and 61.6 percent duck down, respectively, with the balance con-
sisting of duck feathers and feather fiber, and to consist also in substantial
part of used or secondhand feathers as distinguished from new and unused
ones;

With tendency and capacity to mislead and deceive a substantial portion of the
purchasing public with respect to its products and thereby induce purchase
thereof:

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.

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

Mr. Russell T. Porter for the Commission.

Loesch, Scofield & Burke, of Chicago, Ill., 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 Daniel Huttner, an
individual doing business as Sanitary Feather Co., hereinafter re-
ferred 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 Daniel Huttner, is an individual doing
business as Sanitary Feather Co., with his office and principal place of
business located at 5034 South State Street, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has
engaged in the sale of pillows to dealers for resale to the public.

Respondent causes and has caused his said pillows when sold to be
shipped from his place of business in the State of Illinois to dealers
located in various other States of the United States and maintains,