

Syllabus

IN THE MATTER OF
ATOMIC PRODUCTS, INCORPORATED ET AL.

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

Docket 5866. Complaint, Mar. 27, 1951—Decision, Sept. 8, 1951

Merchandisers have a custom of imprinting and otherwise labeling or marking foreign products and their containers with the name of the country of their origin, in legible English words in a conspicuous place, and a substantial portion of the buying and consuming public has come to rely upon such imprinting, labeling or marking, and is influenced thereby to distinguish between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils.

When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as products wholly of domestic manufacture and origin unless they are imprinted, labeled or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are made in substantial part of materials or parts of foreign manufacture or origin.

Where a corporation and its three officers, engaged in assembling mechanical pencils through a process whereby the words "Made in Occupied Japan", which appeared on the imported mechanisms they purchased, were completely concealed within the completed pencils; and in the interstate sale and distribution of said pencils, some boxed in sets with fountain pens, to jobbers and retailers—

(a) Sold said products without any imprinting, labeling, or conspicuous marking on the pencils and the individual cartons in which packed, to disclose that any part of the pencils was of foreign origin;

With tendency and capacity to deceive members of the buying public into the erroneous belief that said pencils were wholly of domestic manufacture, and thereby cause purchase thereof; and

(b) Followed the practice of furnishing, at the request of their retailers and jobbers, price tags and stickers in denominations of \$3.50 and \$7.50, for affixing to their boxed sets in which, in some cases, they sold their said pencils and pens at from \$3.85 to \$4.75 per dozen or from 32 cents to 39 cents per set; notwithstanding the fact that such sets sold at retail for about \$1 each, and rarely, if ever, for as much as \$3.50 or \$7.50;

With tendency and capacity to deceive purchasers into the erroneous belief that said fictitious prices were the customary prices at which said articles were normally sold, and with tendency and capacity thereby to cause the purchase thereof:

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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. John M. Russell for the Commission.

Mr. Samuel J. Ernstoff, of New York City, for respondents.

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 Atomic Products, Inc., a corporation, and Sam Ginsberg, Edward Abraham, and Tiby Needleman, individually and as officers of said corporation, hereinafter referred to as respondents, have 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 Atomic Products, Inc., is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business at 18 West 20th Street, New York 10, N. Y.

Respondents Sam Ginsberg, Edward Abraham, and Tiby Needleman are president, vice president, and secretary-treasurer, respectively, of said corporation with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct, and control the policies and practices of corporate respondent.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products.

PAR. 3. The respondents cause said products, when sold, to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business, respondents purchase mechanisms, actions, or movements for their pencils which

have been imported from Japan in bulk quantities. These mechanisms, actions, or movements as received by them have the words "Made in Occupied Japan" stamped on the spiral end thereof. Respondents assemble mechanical pencils by press-fitting these mechanisms, actions or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press-fitting, the words "Made in Occupied Japan" appearing on the mechanisms, actions or movements are completely concealed. At no place on these pencils, or on the boxes in which they are packed, is the fact disclosed that any part thereof is of foreign origin.

The mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by respondents at prices ranging from approximately \$4 per dozen to \$6 per dozen. Respondents furnish, on request of their jobbers or dealers, price tags or stickers in denominations of \$3.50 and \$7.50 which are intended to be affixed to individual sets before they are offered for sale to the public.

PAR. 5. By virtue of the practice of merchandisers, heretofore established and now existing, of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of the country of their origin, in legible English words in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The pen and pencil sets sold by respondents are rarely, if ever, sold to the purchasing public for \$3.50 or \$7.50 and such sums

are not the regular retail prices for the sets to which they are affixed. Respondents' practice of supplying price tags or stickers in such various denominations which may be and are affixed to boxes containing said sets provides a means and instrumentality by and through which dealers may grossly misrepresent the usual and customary prices of said sets.

PAR. 7. The practice of respondents as aforesaid in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without any imprinting, labeling, or conspicuous marking on the pencils and on the individual cartons in which they are packed showing that the mechanisms, actions, or movements of said pencils are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents, as aforesaid, in supplying their customers with price tags or stickers with amounts thereon greatly in excess and disproportionate to the customary or usual selling price for said articles, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and induces a substantial number of the purchasing public to purchase said products as a result of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, 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 September 8, 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 March 27, 1951, issued and subse-

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quently served its complaint in this proceeding upon respondents, Atomic Products, Inc., a corporation; Sam Ginsberg, Edward Abraham and Tiby Needleman, individually and as officers of respondent corporation, charging them 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 respondents' answer thereto, a hearing was held, at which testimony and other evidence in support of the allegations of said complaint and a stipulation as to certain facts were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony, stipulation, 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, stipulation as to certain facts, and other evidence, proposed findings as to the facts and conclusions presented by counsel supporting the complaint, respondents' counsel not having submitted proposed findings, and oral argument not having been requested. 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 Atomic Products, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business at 18 West 20th Street, New York 10, N. Y.

Respondents Sam Ginsberg, Edward Abraham, and Tiby Needleman are president, vice president, and secretary-treasurer, respectively, of said corporation, with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct, and control the policies and practices of the corporate respondent.

PAR. 2. Respondents are now and have been for several years last past engaged in the business of assembling fountain pens and mechanical pencils, and selling and distributing them.

The respondents cause said products, when sold, to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said

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products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business such commerce is substantial.

PAR. 3. In the course and conduct of their business, as herein found, respondents purchase mechanisms, actions, or movements for their mechanical pencils which have been imported from Japan in bulk quantities. These mechanisms, actions, or movements as received by respondents have the words "Made in Occupied Japan" stamped on the spiral end thereof. Respondents assemble mechanical pencils by press-fitting these mechanisms, actions, or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press-fitting, the words "Made in Occupied Japan" appearing on the mechanisms, actions, or movements are completely concealed. At no place on these pencils, or on the boxes in which they are packed, is the fact disclosed that any part of said pencils is of foreign origin. Respondents have sold said mechanical pencils, under the above-described conditions, subsequent to having been contacted by the Commission.

Respondents' mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. Respondents sell and have sold these sets, including the mechanical pencil, to retail dealers and jobbers for from \$3.85 to \$4.75 per dozen, or from about 32 cents to about 39 cents per set. Such sets are sold retail for about \$1 each, and have rarely, if ever, been sold retail or otherwise for as much as \$3.50 or \$7.50 each.

Until about a year ago, the respondents followed the practice of furnishing, at the request of their retailers and jobbers, price tags and stickers in denominations of \$3.50 and \$7.50, which were intended to be affixed to such sets before they were offered for sale to the public. This practice of supplying price tags and stickers to retailers and jobbers was discontinued subsequent to the Commission's initial contact with respondents in 1950.

PAR. 4. Merchandisers have a custom, heretofore established and now existing, of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of the country of their origin, in legible English words in a conspicuous place, and a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce

throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 5. The practice of respondents as herein found in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without any imprinting, labeling, or conspicuous marking on the pencils and on the individual cartons in which they are packed showing that the mechanisms, actions, or movements of said pencils are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin, and has had and now has the tendency and capacity to cause the purchase thereof as a result of such erroneous and mistaken belief.

The further practice of respondents, as herein found, in supplying their customers with price tags or stickers with amounts thereon greatly in excess of and disproportionate to the customary or usual selling price for said article, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and has had and now has the tendency and capacity to cause the purchase thereof as a result of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents, 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

It is ordered, That respondent Atomic Products, Inc., a corporation, and its officers, representatives, agents, and employees, and respond-

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ents Sam Ginsberg, Edward Abraham, and Tiby Needleman, individually and as officers of Atomic Products, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fountain pens and mechanical pencils, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such pencils or the mechanisms, actions, or movements thereof;

2. Supplying customers or purchasers of fountain pens and mechanical pencils, in sets or otherwise, with price tags or stickers therefor bearing amounts which are, in fact, in excess of the prices at which such article or articles are usually and customarily offered for sale and sold in the usual course of business, or otherwise representing that such articles are sold for amounts in excess of their usual and customary selling prices.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 September 8, 1951].

Commissioner Mason not participating.

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IN THE MATTER OF
SEYDEL CHEMICAL CO. ET AL.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5693. Complaint, Aug. 19, 1949—Decision, Sept. 11, 1951*

Where a corporation and its two officers engaged in the interstate sale and distribution of their drug preparation "Subenon";

In advertising through radio continuities, and various booklets and leaflets entitled "What Should I Do for My Rheumatism and Arthritis," "Subenon for the Treatment of Arthritis," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health," directly and by inference—

- (a) Falsely represented that their said preparation, taken as directed, was an effective treatment for the underlying causes of all forms and types of rheumatism and arthritis, and would correct them;
 - (b) Falsely represented that it was an effective and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and would afford complete relief from the aches, pains and discomforts thereof;
 - (c) Falsely represented that it was an adequate and effective treatment for and would cure rheumatic fever, and the "growing pains" in children which might be indicative thereof;
 - (d) Falsely represented that it would prevent and cure all abnormalities of the body which might result from any and all of the aforesaid conditions, such as stiffness of muscles and joints, lack of motility of joints and cardiac complications which often result from rheumatic fever, and would restore the normal functions of the body;
 - (e) Falsely represented that it provided significant antispasmodic and antipyretic effects and would be of value in producing a healthy blood supply and a healthy body, and in restoring normal intestinal function and normal vigor and wellbeing;
 - (f) Falsely represented that it was superior to salicylates as an analgesic;
- With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and with tendency and capacity so to do, and thereby induce its purchase of their said preparation:

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. Frank Hier*, trial examiner.

Mr. Edward F. Downs and *Mr. Joseph Callaway* 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 Seydel Chemical

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Co., a corporation, Herman Seydel, C. H. Seydel, and Lawless E. West, individually and as officers of said corporation, hereinafter referred to as respondents, having 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 Seydel Chemical Co., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 225 Mercer Street, Jersey City, N. J.

Respondents Herman Seydel, whose address is 110 Gifford Avenue, Jersey City, N. J., C. H. Seydel, whose address is Sand Spring Road, R. F. D. 2, Morristown, N. J., and Lawless E. West, whose address is 291 East One Hundred and Sixty-second Street, New York 56, N. Y., are individuals and president, vice president and treasurer, and secretary, respectively, of respondent corporation. These individual respondents direct and control the business policies and activities of respondent corporation including the acts and practices hereinafter set out.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of manufacturing, offering for sale, selling, and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for their said preparation and the formula and directions for use are as follows:

Designation: Subenon

Formula: Sach tablet contains—

Calcium double salt of benzoic acid and succinic acid benzyl ester	5.5 grains
Starch	1.0 grain
Talc	0.3125 grain
Sodium stearate	0.125 grain
Magnesium stearate	0.0625 grain

Directions for use:

The general directions for use appearing in the labeling are as follows:

Where stiffness of joints is not extreme and muscular pains are not severe . . . or where the case is not one of long standing . . . take eight (5 gr.) Subenon tablets daily for the first month, two tablets with a half-glass of water before each meal and before retiring for the night. Continue for several months taking from two to four tablets daily.

In stubborn cases where joint-stiffness and pain are acute, it has been found beneficial to sustain the dosage of eight (5 gr.) Subenon tablets daily for the

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first three months, two tablets with one half glass of water before each meal and before going to bed. When pain and stiffness subside reduce to four tablets per day for three months. Continue if necessary.

REMEMBER that Subenon is non-toxic and that, even when taken in large quantities, there is no bad effect on the heart.

IMPORTANT—To get most good from the Subenon treatment, cut the dosage in half after the first months, but even though stiffness and aches have lessened or are absent, keep on taking the smaller number of tablets regularly for at least three months more; by so doing you will minimize the chances of a recurrence of symptoms. Some people find some slight tendency toward upset stomach for a few days after beginning the treatment; this is nothing to worry about. Subenon is just getting to work. If your stomach feels queasy, cut by half the number of Subenon tablets you are taking, but keep on taking Subenon regularly.

DIET—A proper diet is all important in the rehabilitation of the body. Too much sugar, too much starch, too much pastry, and in fact too much food of any one type should be avoided. The daily menu of the average family has been arrived at after centuries of education. It will suit most everyone suffering from rheumatoid conditions. Tonics and vitamins may be taken upon advice of physician.

SPECIAL CASES—If you are overweight take Subenon before meals instead of after, for best results.

The dosage given in the booklet, Subenon in Rheumatoid Conditions, is as follows:

Adults—One or two tablets or capsules repeated three or four times daily. In acute rheumatic fever and in severe arthritis a total of 12 to 16 tablets daily should be employed.

Children—In proportion to age and severity of condition.

Additional directions as to dosage are given in the booklet entitled "What Should I Do for My Rheumatism and Arthritis," and are as follows:

For children weighing fifty pounds, or more: one tablet, three times daily. Especially indicated for "growing pains."

For muscular rheumatism: two tablets, four times daily for the first six weeks. Then, one tablet, four times daily until the symptoms disappear. Follow this with one tablet, twice a day for at least three months.

For arthritis: two tablets, four times daily for two months. Follow this with one tablet, twice daily for two months.

Specific directions for use in rheumatoid arthritis are as follows:

The sufferer from rheumatoid arthritis may take six to eight tablets a day, two after each meal. The treatment may be continued for two to three months. Pain and stiffness will usually decrease noticeably. The medicine should, however, be continued for two to three months after the pain and stiffness have disappeared . . . the essential factor in the treatment of rheumatoid arthritis is regular administration of Subenon in the proper dosage—six to eight tablets a day—one or two after each meal and before retiring—to be continued for two to three months. As symptoms are relieved, the dosage may be reduced to three

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to four tablets a day. Subenon makes the sufferer from rheumatoid arthritis comfortable, restores impaired function and at the same time strikes at the root of the disease. It is a physiologic medicine.

Specific directions for use in osteoarthritis are as follows:

The sufferer from osteoarthritis may commence therapy by taking 8 tablets a day, 2 after each meal and 2 before retiring. Pain and stiffness will usually decrease in a few weeks. As the symptoms are relieved, the patient may reduce the dosage to 6 tablets a day. This should be continued indefinitely. Subenon when taken in this dosage will relieve symptoms without any harmful effect to the patient.

The dosage indicated in still other portions of the advertising literature is as follows:

Two tablets three to four times daily. In severe arthritis and acute rheumatic fever four tablets four to five times daily until the acute symptoms subside. Maintenance therapy for two to three months.

PAR. 3. Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in various States of the United States, other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to radio continuities, various booklets and leaflets, including but not limited to booklets entitled "What Should I Do for My Rheumatism and Arthritis," several leaflets entitled "Subenon for the Treatment of Rheumatism," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health"; and respondents have disseminated and caused the dissemination of advertisements concerning said preparation, 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 the said article in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Subenon alleviates the pain (of osteoarthritis), helps restore free motion to the joints and actually halts the progress of the disease.

* * * *

Regular administration of Subenon during an acute attack (or rheumatoid arthritis) relieves symptoms and may prevent the occurrence of the chronic stage.

* * * *

If Subenon is given after a patient is in the chronic state, the drug will often alleviate the pain and stiffness and prevent further crippling deformities. Subenon therapy may actually aid in restoring motion to the involved joints and check the destructive processes going on.

* * * *

Subenon given during an attack of acute rheumatic fever will relieve the joint pains, shorten the duration of the acute attack and often prevent cardiac complications.

Subenon relieves the fever, the swelling, and the severe crippling pains of arthritis.

Sciatica * * * responds well to treatment with Subenon.

Regular administration of Subenon relieves the symptoms, overcomes the inflammatory process and checks the disease (of muscular rheumatism).

With Subenon therapy the pain (of bursitis) is diminished, the swelling subsides and the inflammation clears up.

Subenon is made to overcome the cause of rheumatism.

Subenon is made to prevent the occurrence of ankylosis.

The sufferer who has been confined to bed for years, may find that after taking Subenon for a few months he is able to return to the normal routine of living.

The patient afflicted with rheumatoid arthritis usually complains of symptoms in other parts of the body, i. e., excessive fatigue, loss of appetite, loss of weight, nervousness, sleeplessness, and disturbed bowel function. Subenon relieves all these symptoms. Subenon helps to restore normal intestinal function because the medicine releases the flow of bile and stimulates the liver function, thus increasing the appetite and aiding disturbed bowel function.

Is Subenon of use for children's growing pains? Yes.

Subenon, by activating the liver and aiding in intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism.

Subenon also has an analgesic and antispasmodic effect which relieves pain and spasm and increases motility of the joints.

Both the acute and chronic forms of lumbago respond well to Subenon therapy. Pain is relieved, stiffness disappears, muscle spasm is reduced, and the patient becomes more comfortable in every way.

. . . has shown Subenon to have an antipyretic effect.

SUBENON for the symptomatic treatment of the rheumatic state, promotes patient cooperation by restoring joint mobility, relieving pain and improving general health and mental outlook.

Regular administration of the medication SUBENON alleviates the pain, helps restore free motion to the joints and actually halts the progress of the disease.

SUBENON established treatment for arthritis and rheumatism.

Subenon by activating the liver and aiding intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism. A healthy blood stream makes for a healthy body, free from pain.

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Salicylates, such as aspirin, etc., are used to allay pain for a few hours at a time, while arthritis and rheumatism continue to get a firmer hold. Drugs such as aspirin accumulate in the body. * * * Once the body is freed of salicylates, Subenon can help Nature restore your normal vigor and well being.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import, but not specifically set out herein, respondents have represented, directly and by inference, that their preparation Subenon, when taken as directed—

(a) is an adequate and effective treatment for and will correct the underlying causes of and cure all forms and types of rheumatism and arthritis.

(b) is an adequate, effective, and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and will afford complete relief from the aches, pains, and discomforts thereof;

(c) is an adequate and effective treatment for and will cure rheumatic fever and "growing pains" in children which may be indicative of rheumatic fever;

(d) will prevent and correct all abnormalities of the body which may result from any and all of the aforesaid conditions such as stiffness of muscles and joints, lack of motility of joints and cardiac complications often resulting from rheumatic fever and will restore the normal functions of the body;

(e) provides significant antispasmodic and antipyretic effects;

(f) will be of value in producing a healthy blood supply, a healthy body, in restoring normal intestinal function and normal vigor and well being;

(g) is superior to salicylates as an analgesic.

PAR. 7. 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, Subenon, however taken—

(a) will not correct the underlying causes of, is not an adequate or effective treatment for, and will not cure any form or type of rheumatism or arthritis;

(b) is not an adequate, effective or reliable treatment for the symptoms or manifestations of rheumatism or arthritis; the aches, pains and discomfort incident to these ailments may be of such a nature that they will be in no way alleviated by the use of this preparation, however taken, and in other cases the relief will be limited to such degree of temporary and mild analgesic effect as its calcium double salt of

benzoic acid and succinic acid benzel ester content may afford in individual cases;

(c) will not cure rheumatic fever and is not an adequate or effective treatment therefor. Its use will not be of value in "growing pains" in children;

(d) will not prevent or correct abnormalities which result from any of the conditions set out in (a), (b) and (c) above and will not restore the normal functions of the body;

(e) will not provide any significant antispasmodic or antipyretic effects;

(f) will not produce a healthy blood supply or a healthy body and will not restore normal intestinal function or normal vigor and well-being;

(g) is not superior to salicylates as an analgesic. On the contrary, salicylates are more effective in relieving pain than the analgesic ingredient in Subenon.

PAR. 8. The use by respondents of the foregoing false and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' preparation.

PAR. 9. The aforesaid acts and practices of respondents, 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.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of the trial examiner and decision of the Commission and order to file report of compliance, Docket 5693, September 11, 1951, follows:

This matter came on to be heard by the Commission upon respondents' "Petition to set aside order filed April 2, 1951, and for leave to amend and substitute answer" which was considered by the Commission as an appeal from the trial examiner's initial decision herein, and answer thereto filed by counsel supporting the complaint.

The grounds relied upon in support of said appeal are that the substitute answer filed by the respondents on March 8, 1951, in which they admitted all the material allegations of fact set forth in the complaint, was filed without counsel or legal advice and that the

respondents did not intend to admit certain allegations of the complaint. The respondents request that the trial examiner's initial decision be set aside or modified to permit the filing of a new answer; or, in the alternative, that said initial decision be suspended or held inoperative until the final decision in certain other proceedings now pending before the Commission. Counsel supporting the complaint in his answer contends that the petition should be denied for the reasons therein set forth.

The complaint herein charges the respondents with the dissemination of false advertisements of a drug preparation designated "Subenon." The allegations of the complaint are plain and unambiguous. In their original answer the respondents admitted in part and denied in part the allegations of the complaint. Subsequently respondents moved for permission to withdraw said answer and to substitute in lieu thereof an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing. This motion was granted and the substitute answer was filed. The respondents knew, or should have known, the contents of and the effect of the substitute answer filed by them. The Commission is of the opinion, therefore, that the respondents' request that the trial examiner's initial decision be set aside, or modified to permit the filing of a new answer, should be denied.

There does not appear to be any sufficient reason to warrant the suspension of this proceeding until the final disposition of certain other proceedings now pending before the Commission.

The Commission having duly considered respondents' appeal, answer thereto, and the record herein, and being of the opinion, for the reasons above stated, that said appeal is without merit and that the initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal from the trial examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 11th day of September 1951, become the decision of the Commission.

It is further ordered, That the respondents, except Lawless E. West, shall, within sixty (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.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 19, 1949, issued and subsequently served its complaint in this proceeding upon respondent Seydel Chemical Co., a corporation, and upon respondents Herman Seydel, C. H. Seydel, and Lawless E. West, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce through the dissemination of false advertisements in violation of the provisions of said act. On October 17, 1949, respondents filed an answer to the complaint but on March 13, 1951, moved to withdraw said answer and substitute in lieu thereof another answer, which motion on March 26, 1951, the trial examiner granted. Said substitute answer admits all the material allegations of fact set forth in said complaint, waives all intervening procedure and further hearing. Said substitute answer further sets forth that the representations challenged in the complaint were made by the respondents in good faith and without conscious intent to defraud. Thereafter, the proceeding regularly came on for final consideration by the trial examiner theretofore duly designated by the Commission, upon the complaint and the substitute answer thereto and 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 Seydel Chemical Co., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 225 Mercer Street, Jersey City, N. J.

Respondents Herman Seydel, whose address is 110 Gifford Avenue, Jersey City, N. J., and C. H. Seydel, whose address is Sand Spring Road, R. F. D. 2, Morristown, N. J., are individuals and president and vice president, and treasurer, respectively, of respondent corporation. These individual respondents direct and control the business policies and activities of respondent corporation including the acts and practices hereinafter set out.

Respondent Lawless E. West, whose address is 291 East One Hundred and Sixty-second Street, New York 56, N. Y., was at one time secretary of respondent corporation, but, since prior to the issuance of the complaint herein, has had no connection with respondent corporation either as an officer, stockholder, employee, or otherwise.

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PAR. 2. The respondents are now and for several years last past have been engaged in the business of manufacturing, offering for sale, selling, and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for their said preparation and the formula and directions for use are as follows:

Designation: Subenon

Formula: Each tablet contains—

Calcium double salt of benzoic acid and succinic acid benzyl ester.....	5.5	grains
Starch.....	1.0	grain
Talc.....	0.3125	grain
Sodium stearate.....	0.125	grain
Magnesium stearate.....	0.0625	grain

Directions for use:

The general directions for use appearing in the labeling are as follows:

While stiffness of joints is not extreme and muscular pains are not severe . . . or where the case is not one of long standing . . . take eight (5 gr.) Subenon tablets daily for the first month, two tablets with a half-glass of water before each meal and before retiring for the night. Continue for several months taking from two to four tablets daily.

In stubborn cases where joint-stiffness and pain are acute, it has been found beneficial to sustain the dosage of eight (5 gr.) Subenon tablets daily for the first three months, two tablets with one half glass of water before each meal and before going to bed. When pain and stiffness subside reduce to four tablets per day for three months. Continue if necessary.

REMEMBER that Subenon is nontoxic and that, even when taken in large quantities, there is no bad effect on the heart.

IMPORTANT—To get most good from the Subenon treatment, cut the dosage in half after the first months, but even though stiffness and aches have lessened or are absent, keep on taking the smaller number of tablets regularly for at least three months more; by so doing you will minimize the chances of a recurrence of symptoms. Some people find some slight tendency toward upset stomach for few days after beginning the treatment; this is nothing to worry about. Subenon is just getting to work. If your stomach feels queasy, cut by half the number of Subenon tablets you are taking, but keep on taking Subenon regularly.

DIET—A proper diet is all important in the rehabilitation of the body. Too much sugar, too much starch, too much pastry, and in fact too much food of any one type should be avoided. The daily menu of the average family has been arrived at after centuries of education. It will suit most everyone suffering from reumatoid conditions. Tonics and vitamins may be taken upon advice of physician.

SPECIAL CASES—If you are overweight take Subenon before meals instead of after, for best results.

The dosage given in the booklet, Subenon in Rheumatoid Conditions, is as follows:

Adults—One or two tablets or capsules repeated three or four times daily. In acute rheumatic fever and in severe arthritis a total of 12 to 16 tablets daily should be employed.

Children—In proportion to age and severity of condition.

Additional directions as to dosage are given in the booklet entitled "What Should I Do for My Rheumatism and Arthritis," and are as follows:

For children weighing fifty pounds, or more: one tablet, three times daily. Especially indicated for "growing pains."

For muscular rheumatism: two tablets, four times daily for the first six weeks. Then, one tablet, four times daily until the symptoms disappear. Follow this with one tablet, twice a day for at least three months.

For arthritis, two tablets, four times daily for two months. Follow this with one tablet, twice daily for two months.

Specific directions for use in rheumatoid arthritis are as follows:

The sufferer from rheumatoid arthritis may take six to eight tablets a day, two after each meal. The treatment may be continued for two to three months. Pain and stiffness will usually decrease noticeably. The medicine should, however, be continued for two to three months after the pain and stiffness have disappeared . . . the essential factor in the treatment of rheumatoid arthritis is regular administration of Subenon in the proper dosage—six to eight tablets a day—one or two after each meal and before retiring—to be continued for two to three months. As symptoms are relieved, the dosage may be reduced to three to four tablets a day. Subenon makes the sufferer from rheumatoid arthritis comfortable, restores impaired function and at the same time strikes at the root of the disease. It is a physiologic medicine.

Specific directions for use in osteoarthritis are as follows:

The sufferer from osteoarthritis may commence therapy by taking eight tablets a day, 2 after each meal and 2 before retiring. Pain and stiffness will usually decrease in a few weeks. As the symptoms are relieved, the patient may reduce the dosage to 6 tablets a day. This should be continued indefinitely. Subenon when taken in this dosage will relieve symptoms without any harmful effect to the patient.

The dosage indicated in still other portions of the advertising literature is as follows:

Two tablets three to four times daily. In severe arthritis and acute rheumatic fever four tablets four to five times daily until the acute symptoms subside. Maintenance therapy for two to three months.

PAR. 3. Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in various States of the United States, other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

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PAR. 4. In the course and conduct of their business respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to radio continuities, various booklets and leaflets, including but not limited to booklets entitled "What Should I Do for My Rheumatism and Arthritis," several leaflets entitled "Subenon for the Treatment of Rheumatism," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health"; and respondents have disseminated and have caused the dissemination of advertisements concerning said preparation, 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 said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Subenon alleviates the pain (of osteoarthritis), helps restore free motion to the joints and actually halts the progress of the disease.

* * * *

Regular administration of Subenon during an acute attack (of rheumatoid arthritis) relieves symptoms and may prevent the occurrence of the chronic stage.

* * * *

If Subenon is given after a patient is in the chronic state, the drug will often alleviate the pain and stiffness and prevent further crippling deformities. Subenon therapy may actually aid in restoring motion to the involved joints and check the destructive processes going on.

* * * *

Subenon given during an attack of acute rheumatic fever will relieve the joint pains, shorten the duration of the acute attack and often prevent cardiac complications.

Subenon relieves the fever, the swelling, and the severe crippling pains of arthritis.

Sciatica * * * responds well to treatment with Subenon.

* * * *

Regular administration of Subenon relieves the symptoms, overcomes the inflammatory process and checks the disease (of muscular rheumatism).

With Subenon therapy the pain (of bursitis) is diminished, the swelling subsides and the inflammation clears up.

Subenon is made to overcome the cause of rheumatism.

Subenon is made to prevent the occurrence of ankylosis.

The sufferer who has been confined to bed for years, may find that after taking Subenon for a few months he is able to return to the normal routine of living.

The patient afflicted with rheumatoid arthritis usually complains of symptoms in other parts of the body, i. e., excessive fatigue, loss of appetite, loss of weight, nervousness, sleeplessness, and disturbed bowel function. Subenon relieves all these symptoms. Subenon helps to restore normal intestinal function because the medicine releases the flow of bile and stimulates the liver function, thus increasing the appetite and aiding disturbed bowel function.

Is Subenon of use for children's growing pains? Yes.

Subenon, by activating the liver and aiding in intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism.

Subenon also has an analgesic and antispasmodic effect which relieves pain and spasm and increases motility of the joints.

Both the acute and chronic forms of lumbago respond well to Subenon therapy. Pain is relieved, stiffness disappears, muscle spasm is reduced, and the patient becomes more comfortable in every way.

... has shown Subenon to have an antipyretic effect.

SUBENON for the symptomatic treatment of the rheumatic state, promotes patient cooperation by restoring joint mobility, relieving pain and improving general health and mental outlook.

Regular administration of the medication SUBENON alleviates the pain, helps restore free motion to the joints and actually halts the progress of the disease.

SUBENON established treatment for arthritis and rheumatism.

Subenon by activating the liver and aiding intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism. A healthy blood stream makes for a healthy body, free from pain.

Salicylates, such as aspirin, etc., are used to allay pain for a few hours at a time, which arthritis and rheumatism continue to get a firmer hold. Drugs such as aspirin accumulate in the body. * * * Once the body is freed of salicylates, Subenon can help Nature restore your normal vigor and well being.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import, but not specifically set out herein, respondents have represented, directly and by inference, that their preparation Subenon, when taken as directed—

(a) is an adequate and effective treatment for and will correct the underlying causes of and cure all forms and types of rheumatism and arthritis;

(b) is an adequate, effective, and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and will afford complete relief from the aches, pains, and discomfort thereof;

(c) is an adequate and effective treatment for and will cure rheumatic fever and "growing pains" in children which may be indicative of rheumatic fever;

(d) will prevent and correct all abnormalities of the body which may result from any and all of the aforesaid conditions such as stiff-

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ness of muscles and joints, lack of motility of joints and cardiac complications often resulting from rheumatic fever and will restore the normal functions of the body;

(e) provides significant antispasmodic and antipyretic effects;

(f) will be of value in producing a healthy blood supply, a healthy body, in restoring normal intestinal function and normal vigor and well being;

(g) is superior to salicylates as an analgesic.

PAR. 7. 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, Subenon, however taken:

(a) will not correct the underlying causes of, is not an adequate or effective treatment for, and will not cure any form or type of rheumatism or arthritis;

(b) is not an adequate, effective, or reliable treatment for the symptoms or manifestations of rheumatism or arthritis; the aches, pains, and discomfort incident to these ailments may be of such a nature that they will be in no way alleviated by the use of this preparation, however taken, and in other cases the relief will be limited to such degree of temporary and mild analgesic effect as its calcium double salt of benzoic acid and succinic acid benzyl ester content may afford in individual cases;

(c) will not cure rheumatic fever and is not an adequate or effective treatment therefor. Its use will not be of value in "growing pains" in children;

(d) will not prevent or correct abnormalities which result from any of the conditions set out in (a), (b), and (c) above and will not restore the normal functions of the body;

(e) will not provide any significant antispasmodic or antipyretic effects;

(f) will not produce a healthy blood supply or a healthy body and will not restore normal intestinal function or normal vigor and well being;

(g) is not superior to salicylates as an analgesic. On the contrary, salicylates are more effective in relieving pain than the analgesic ingredient in Subenon.

PAR. 8. The use by respondents of the foregoing false and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion

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of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' preparation.

CONCLUSION

The above-described acts and practices of respondents as hereinabove 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

It is ordered, That respondent Seydel Chemical Co., a corporation, its officers, representatives, agents, and employees, and respondents Herman Seydel and C. H. Seydel, individually and as officers of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Subenon, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly;

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 such product will correct the underlying causes of, or will cure any form or type of rheumatism or arthritis;

(b) That such product is an adequate or effective treatment for any form or type of rheumatism or arthritis;

(c) That such product is an adequate, effective or reliable treatment for the symptoms or manifestations of rheumatism or arthritis;

(d) That such product will alleviate, either permanently or completely, the aches, pains, or discomfort incident to rheumatism or arthritis;

(e) That such product will cure rheumatic fever or is an adequate or effective treatment therefor;

(f) That such product has any value in the treatment, relief, or cure of "growing pains" in children;

(g) That such product will prevent, or correct abnormalities, which may result from any kind of arthritis, rheumatism, or rheumatic fever;

(h) That such product will provide any significant antispasmodic or antipyretic effects;

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(i) That such product will produce a healthy blood supply or a healthy body, or will restore normal intestinal function or normal vigor;

(j) That such product is superior to salicylates as an analgesic.

2. 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Subenon, any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Lawless E. West.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, except Lawless E. West, shall, within sixty (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 aforesaid order and decision of the Commission].

Complaint

IN THE MATTER OF

RENE D. LYON CO., INC., ET AL.

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

Docket 5859. Complaint, May 15, 1951¹—Decision, Sept. 20, 1951

In the absence of a disclosure showing the foreign origin of a product, the public understands and believes that it is of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in occupied Japan and China, including expansion watch bands.

Where a corporation and its two officers, engaged in the interstate sale and distribution of imported expansion watch bands, in competition with sellers of such products who adequately disclosed their importation and other sellers of such products of domestic manufacture—

Offered and sold said bands, upon the side of which, when received, the words "Made in Occupied Japan" or "Made in China" were stamped or imprinted, mounted on cards so as to conceal such marking, and enclosed in a cellophane wrapping so as to completely conceal said stamp until after purchase and removal of the wrapper, so that the purchasing public was not informed, until after purchase, of said foreign origin;

With tendency and capacity to mislead the purchasing public into the mistaken belief that said bands were of domestic origin and thereby into the purchase of substantial quantities thereof, and with effect of unfairly diverting trade to them from their competitors, to the substantial injury of competition in commerce; and with the result also of placing in the hands of dealers a means to deceive members of the purchasing public:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

AMENDED 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 Rene D. Lyon Co., Inc., a corporation, and Rene D. Lyon and Donald A. Lyon, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would

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be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rene D. Lyon Co., Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 903 Broadway, New York, N. Y. Respondent Rene D. Lyon is the president and respondent Donald A. Lyon is the secretary of the corporate respondent with their address at 903 Broadway, New York, N. Y. Said individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent.

PAR. 2. Respondents now and for some time last past have, among other things, been engaged in the sale and distribution of expansion watch bands imported from Occupied Japan and China. In the course and conduct of said business respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. When said bands are received by respondents, the words "Made in Occupied Japan" and "Made in China," as the case may be, are stamped or imprinted on a link on the inside of the bands. Respondents, in the course of their business, wrap certain of said bands in cellophane and attach them to cards after which they are sold and distributed to dealers and ultimately offered for sale to the purchasing public. The wrapping of said bands and the manner in which they are attached to said cards completely conceal the aforesaid markings. At no place on the wrapping or cards, or otherwise, is the fact revealed that said bands are imported. As a result, the purchasing public is not informed, prior to purchase, that said bands are imported as aforesaid.

PAR. 4. In the absence of a disclosure showing that a product is imported, the purchasing public understands and believes that a product is of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in Occupied Japan and China, including expansion watch bands.

PAR. 5. Respondents, in the conduct of their business, are in substantial competition in commerce with other corporations and individuals who sell imported watch bands and who adequately disclose that

such bands are imported and with corporations and individuals who sell watch bands of domestic manufacture.

PAR. 6. The failure of respondents to disclose that the bands wrapped and attached to cards are of foreign origin has the tendency and capacity to mislead the purchasing public into erroneous and mistaken belief that said bands are of domestic origin and into the purchase of substantial quantities thereof, because of such mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

Through the practices hereinabove set forth, respondents place in the hands of dealers a means and instrumentality whereby such dealers may mislead and deceive members of the purchasing public as to the source of origin of their said bands.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and 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 September 20, 1951, the initial decision in the instant matter of trial examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 15th day of May 1951, issued and subsequently served its amended complaint in this proceeding upon respondents Rene D. Lyon Co., Inc., a corporation and Rene D. Lyon and Donald A. Lyon, individually and as officers of said corporation, charging them and each of them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed no answers. Thereafter a hearing was held at which respondent Donald A. Lyon appeared in his own behalf and for and on behalf of the other respondents. At said hearing testimony and other evidence in support of the allegations of the complaint and testimony in op-

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position thereto were introduced before the above-named trial examiner 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, testimony, and other evidence (permission to submit proposed findings as to the facts and conclusions was granted, but none were submitted, and oral argument was not requested); and 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 Rene D. Lyon Co., Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 903 Broadway, New York, N. Y. Respondent Rene D. Lyon is the president and respondent Donald A. Lyon is the secretary of the corporate respondent with their address at 903 Broadway, New York, N. Y. Said individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent.

PAR. 2. Respondents now and for some time last past have, among other things, been engaged in the sale and distribution of expansion watch bands imported from Occupied Japan and China. In the course and conduct of said business respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. Respondents, in the conduct of their business, are in substantial competition in commerce with other corporations and individuals who sell imported watch bands and who adequately disclose that such bands are imported and with corporations and individuals who sell watch bands of domestic manufacture.

PAR. 4. When said imported bands are received by respondents, the words "Made in Occupied Japan" or "Made in China," as the case may be, are stamped or imprinted on a link on the under or lower side of the bands. Respondents, in the course of their business, attach certain of the bands to cards so affixed as to conceal the marking of foreign origin, and seal the entire surface of the card with a cello-

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phane wrapping, leaving only the top side visible and completely concealing the stamp showing the foreign origin of the band so that the purchaser has no notice until after purchase and the removal of the cellophane wrapper and the band from the card that the band is of foreign origin. Nowhere on the wrapping or cards, or otherwise, is the fact revealed that said bands are imported. As a result, the purchasing public is not informed, prior to and until after purchase, that said bands are imported from Japan or China.

PAR. 5. In the absence of a disclosure showing that a product is of foreign origin the public understands and believes that it is of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in Occupied Japan and China, including expansion watch bands.

PAR. 6. The failure of respondents to disclose that the bands wrapped and attached to cards are of foreign origin has the tendency and capacity to mislead the purchasing public into the erroneous and mistaken belief that said bands are of domestic origin and into the purchase of substantial quantities thereof, because of such mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

Through the practices hereinabove found, respondents place in the hands of dealers a means and instrumentality whereby such dealers may mislead and deceive members of the purchasing public as to the source of origin of their said bands.

CONCLUSION

The aforesaid acts and practices of respondents, as set forth in the findings of fact, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Rene D. Lyon Co., Inc., a corporation, its directors, officers, representatives, agents and employees, and respondents Rene D. Lyon and Donald A. Lyon, individually, directly or through any corporate device in connection with the offering for sale, sale, and distribution of expansion or other watch or wrist bands, or other similar products, in commerce, as "commerce" is defined in

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the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling expansion or other wrist bands which are imported from any foreign country without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.
2. Representing in any manner that expansion or other wrist bands of foreign manufacture are of domestic manufacture.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 September 20, 1951].

Complaint

IN THE MATTER OF
SAMUEL ELIAS AND JACK OSTROW DOING BUSINESS AS
MUTUAL TOGS CO.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN
ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5861. Complaint, Mar. 23, 1951—Decision, Sept. 20, 1951

Where two partners engaged in the manufacture and introduction into commerce, and offer, sale, and distribution therein, of wool products as defined in the Wool Products Labeling Act—

Misbranded ladies' skirts within the intent and meaning of said act and the rules and regulations promulgated thereunder in that, (1) contrary to the labels affixed thereto, they were not 60 percent "wool," as there defined, and they contained more than 40 percent of rayon; and, (2) the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 percent of the total fiber weight:

Held, That such acts and practices, under the circumstances set forth, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that respondents removed tags affixed to the piece goods received from the manufacturer, and substituted tags and labels which contained different information: said charge, while true, was dismissed as not properly subject to the charge of violation of the Act under the circumstances.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Russell T. Porter for the Commission.

Mr. Harold Henry, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Sam Elias and Jack Ostrow, individually and as copartners doing business as Mutual Togs Co., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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: