

IN THE MATTER OF
FOLEY & COMPANY ET AL.

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

Docket 5515. Complaint, Nov. 20, 1947—Decision, Jan. 16, 1952

As respects a contention that an order recommended by a substitute hearing examiner would be improper and illegal in view of the fact that it was based solely upon the reading of the record by the hearing examiner who was not present at the taking of the testimony: the final responsibility for the disposition of all cases coming before the Commission, including the form of its orders to cease and desist, rests upon the Commission itself, and it has not only the right, but the duty, under the law, to reach its own conclusions on the evidence regardless of those reached by the hearing examiner, even the examiner who presided at the reception of evidence.

While the Administrative Procedure Act requires that the hearing examiner who presided at the reception of evidence must ordinarily prepare the recommended decision, an exception is made where such hearing examiner has become unavailable, as in the instant matter, in which he had retired, and in which the procedure followed by the Commission, after its due designation of a substitute hearing examiner, was in compliance with the statutory requirements.

Where a corporation engaged in the interstate sale and distribution of its "Foley's Honey & Tar Compound," through advertisements in newspapers and radio announcements—

(a) Represented that the use of said preparation as directed was a remedy or competent or effective treatment for coughs due to colds, and would check them or shorten their duration;

The facts being there is no known medication which will cure or shorten the duration of a cold or the underlying causes of a cough due thereto; and sole value of its said preparation, limited to its demulcent and mild expectorant properties, was that it might lessen the occurrence and severity of coughing spells due to a cold for not more than one-half hour from the time of taking;

(b) Represented that its use as directed supplied a therapeutic dose of terpins; when in fact the terpin hydrate content was too small to have any beneficial effect; and

(c) Falsely represented that the therapeutic value of said preparation had been proven clinically by a test made in a hospital;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce its purchase of said preparation:

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.

As respects respondents' further contention that the substitute hearing examiner was unable to take into consideration their proposed findings of fact which

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had been given orally to the original hearing examiner at an unreported conference rather than in writing as required by the Commission's rules of practice covering the matter, it appeared that respondents in their brief and oral argument had had full opportunity to present directly to the Commission any exceptions they had to the recommended decision and to make any relevant argument on any phase of the matter; and the Commission, under the circumstances, was of the opinion that its decision in the instant matter was proper and legal and had been reached in accordance with due process of law.

As regards the charge in the complaint that respondents represented that the use of their said preparation as directed was a remedy or a competent or effective treatment for colds and sore throats due thereto: the evidence of record was not sufficient to support such allegations.

Before *Mr. Randolph Preston* and *Mr. Clyde M. Hadley*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 *Foley & Company*, a corporation, and *A. M. Salomon*, an individual, 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 *Foley & Company* is a corporation chartered and doing business under the laws of the State of Illinois, with its office and principal place of business at 945-47 George Street, Chicago, Illinois.

PAR. 2. Respondent *A. M. Salomon* is an individual operating and trading under the name of *Lauesen and Salomon*, with his office located at 520 North Michigan Avenue, Chicago, Illinois. This respondent is the advertising agent of the respondent *Foley & Company* and in the course and conduct of his business prepares advertising matter for said company, and in conjunction and cooperation with said company disseminates or causes the dissemination of advertising matter with respect to the medicinal preparation hereinafter referred to, including the advertising matter set out herein.

PAR. 3. Respondent *Foley & Company* is now and has been for several years last past engaged in the business of selling and distributing a certain drug preparation, as "drug" is defined in the Federal Trade

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Commission Act. The designation used by said respondent for its preparation and formula and directions for its use are as follows:

Designation: Foley's Honey & Tar Compound.

Formula: Prior to March 1944:

90 lbs. Carbonate Magnesium
 17 lbs. Bicarbonate of Soda
 12 Gals. Pine Tar
 81 lbs. Gum Arabic
 5 lbs. Mobenate
 2,100 lbs. Brown Sugar
 679 lbs. Corn Syrup
 45 Gals. Honey
 4 Gals. Sugar Color
 6 Pts. Oil of Peppermint
 8½ Pts. Oil of Anise
 8 Pts. Tincture of Capsicum
 17½ Lbs. Terpin Hydrate
 35½ Gals. Pure Grain Alcohol
 Water to make 443½ Gals. finished product.

Subsequent to March 1944:

Each fluid ounce contains:

Terpin Hydrate.....	3.9 gr.
Pine Tar.....	12.9 m.
Sodium Monobenzyl succinate (Mobenate).....	0.6 gr.
Gum Arabic (acacia).....	10 gr.
Light Amber Honey.....	48.7 m.
Brown Sugar.....	263.4 gr.
Corn Syrup.....	78.3 gr.
Oil of Peppermint.....	0.8 m.
Oil of Anise.....	1.1 m.
Light Magnesium Carbonate.....	11.1 gr.
Sodium Bicarbonate.....	3.1 gr.
Sugar Color.....	5.4 m.
Propylene Glycol.....	38.5 m.
Water q. s. ad.....	1 fld .oz.

Directions for use:

For adults, 1 teaspoonful. Children of school age, ½ teaspoonful; children 2 to 4 years, 10 to 20 drops; infants 1 year old, 5 to 10 drops. Repeat doses as directed every 1, 2 or 3 hours as needed.

Said respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States located in the United States and the District of Columbia.

PAR. 4. In the course and conduct of their businesses, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, includ-

ing but not limited to advertisements appearing in the March 13, 1946, issue of The Chicago News, Chicago, Illinois, the April 3, 1946, issue of the Cleveland Plain Dealer, Cleveland, Ohio, and the January 26, 1947, issue of the Pittsburgh Press, Pittsburgh, Pennsylvania, and by means of radio continuities including but not limited to broadcasts over Stations WLS, Chicago, Illinois, on July 26, 1943, WMT, Cedar Rapids, Iowa, on August 20, 1943, WMBD, Peoria, Illinois, on June 26, 1943, and KQV, Pittsburgh, Pennsylvania, on December 20 and 27, 1945; 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:

Newspapers Advertisements:

News about coughs. To give sufferers from coughs due to colds benefit of important medical development, N. Y. doctor adds just one ingredient to already speedy Foley's Honey & Tar and creates a cough syrup better and faster. Tests in N. Y. hospital demonstrate that this new, improved Foley's benefited 41% with coughs from colds in 15 minutes, 35% more in 2 hours, balance in 24 hours. Get over your cough quicker by getting the new Foley's Honey & Tar Compound from your druggist, 30 & 60¢

Coughers find answer to \$64 question: "How can I get rid of my cough from a cold quicker?" The answer is, take plenty of terpins! They definitely help break up, throw off cough quicker. That's why so many doctors prescribe them—why the new Foley's Honey & Tar has been specially terpin-enriched. This improvement insures you more terpins than ever before to help you get well quicker. As heretofore, Foley's soothes throat, checks coughing, but now it also gives you plenty of terpins. * * *

Get well quicker from your cough due to a cold. Foley's Honey & Tar Cough Compound.

Radio Continuities:

If you take Foley's Honey & Tar you may be pleasantly surprised at how much sooner you would get over such a cough. Speed-up recovery is a special feature of Foley's Honey & Tar. As the result of making cough syrup for over 67 years, the Foley people know that cough sufferers want a cough syrup that does a whole lot more than soothe the throat and check coughing. We want one which will also help to get *over* our cough quicker. To meet this demand, the Foley people experimented until they finally developed such a cough syrup—a cough syrup which actually helps sufferers from coughs due to colds to recover quicker. * * *

Be more comfortable while you have a cough from a cold. Get over it quicker. Take Foley's Honey & Tar. You'll find it unsurpassed for the speed with which it soothes the rawness in your throat and quiets that cough-starting tickle. It's so effective that you'll start feeling better with the first spoonful of Foley's you

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take. Before you realize it, those harsh, wracking coughing spells will have ceased. Even more important is the action which Foley's has on your bronchial tubes to help speed your recovery from your cough. For speedy relief and quicker recovery, take Foley's Honey & Tar. * * *

Check your cough from a cold before it gets worse. * * * Get after it with Foley's Honey & Tar cough syrup. Do this—and you'll notice an improvement with the very first spoonful. Your throat will become more comfortable; the tickle will die down; your coughing spells will soon cease. While Foley's is unsurpassed for easing your throat and checking coughing spells, it is famous for its internal action by which the duration of the cough is definitely lessened. * * *

With Foley's Honey & Tar ready and able to help you, don't suffer needless discomforts or let your cough hang on longer than necessary. Get over it quicker by doctoring yourself with Foley's Honey & Tar.

A little over two years ago a nationally known New York medical authority advised the makers of Foley's Honey & Tar that their cough syrup could be greatly improved if they added one newly developed ingredient. As the result, this authority was told to test out the improved Foley formula in a New York hospital under scientific conditions. The authenticated records of their test showed 41% of those suffering from coughs due to colds were benefited in 10 minutes by this improved formula, 35% more within 2 hours, and the remainder within 24 hours. In cases of sore throat, 60% benefited in 15 minutes. This new, improved formula is now embodied in Foley's Honey & Tar. Take advantage of this great step forward in a cough syrup and get well quicker. Throw off your cold in less time and suffer less. For speedy comfort and speeded-up recovery, go to your druggist now for a 30 to 60¢ bottle of Foley's Honey & Tar. But be sure to get this hospital-tested formula which gives so much quicker results, be sure to get Foley's—spelled F-O-L-E-Y—Foley's Honey & Tar.

PAR. 6. Through the use of the advertisements hereinabove set forth and others of the same import but not specifically set out herein, respondents represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for colds and sore throat and coughs due to colds; that it will check coughs due to colds or shorten their duration; that its use, as directed, supplies a therapeutic dose of terpins and that its value in the treatment of sore throat and coughs due to colds has been proved clinically by a test made in a hospital.

PAR. 7. Said 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, the value of said preparation under either of said formulas is limited to its demulcent and mild expectorant properties. Its use may lessen the occurrence of coughing spells due to colds, but since neither of said properties will have any effect upon the cause or causes of colds, or sore throat or coughs, due to colds, it is not a remedy or a competent or effective treatment therefor and will not check such ailments or shorten their duration. Its use, as directed, will not supply a therapeutic dose of

terpins. Said preparation has not been tested in a hospital and the test referred to in said advertisements is not a valid or authentic test and does not demonstrate that said preparation is of benefit to persons suffering from sore throat and coughs due to colds in the manner and to the extent set out therein.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 20, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of a substitute hearing examiner duly designated by the Commission, the hearing examiner originally designated herein being unavailable, briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Foley & Company is a corporation chartered and doing business under the laws of the State of Illinois, with its office and principal place of business at 945-47 George Street, Chicago, Illinois.

PAR. 2. Respondent A. M. Salomon is an individual operating and training under the name of Lauesen and Salomon, with his office located at 520 North Michigan Avenue, Chicago, Illinois. This respondent is the advertising agent of the respondent Foley & Company and in the course and conduct of his business prepares advertising matter for said company, and in conjunction and cooperation with said company dis-

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seminates or causes the dissemination of advertising matter with respect to the medicinal preparation hereinafter referred to, including the advertising matter set out herein.

PAR. 3. Respondent Foley & Company is now and has been for several years last past engaged in the business of selling and distributing a certain drug preparation, as "drug" is defined in the Federal Trade Commission Act. The designation used by said respondent for its preparation and formula and directions for its use are as follows:

Designation: Foley's Honey & Tar Compound.

Formula, subsequent to March 1944:

Each fluid ounce contains:

Terpin Hydrate.....	3.9 gr.
Pine Tar.....	12.9 m.
Sodium Monobenzyl Succinate (Mobenate).....	0.6 gr.
Gum Arabic (acacia).....	10 gr.
Light Amber Honey.....	48.7 m.
Brown Sugar.....	263.4 gr.
Corn Syrup.....	78.3 gr.
Oil of Peppermint.....	0.8 m.
Oil of Anise.....	1.1 m.
Light Magnesium Carbonate.....	11.1 gr.
Sodium Bicarbonate.....	3.1 gr.
Sugar Color.....	5.4 m.
Propylene Glycol.....	38.5 m.
Water q. s. ad.....	1 fld. oz.

Directions for Use:

For adults, 1 teaspoonful. Children of school age, $\frac{1}{2}$ teaspoonful; children 2 to 4 years, 10 to 20 drops; infants 1 year old, 5 to 10 drops. Repeat doses as directed every 1, 2 or 3 hours as needed.

The formula prior to March 1944 was substantially the same, the main difference being a smaller content of terpin hydrate.

Respondent Foley & Company causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of inducing the purchase of said preparation, respondents have disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and they have also disseminated and have caused the dissemination, by various means, of many advertisements 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.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and by radio announcements, have been the following:

News about coughs. To give sufferers from coughs due to colds benefit of important medical development, N. Y. doctor adds just one ingredient to already speedy Foley's Honey & Tar and creates a cough syrup better and faster. Tests in N. Y. hospital demonstrate that this new, improved Foley's benefited 41% with coughs from colds in 15 minutes, 35% more in 2 hours, balance in 24 hours. Get over your cough quicker by getting the new Foley's Honey & Tar Compound from your druggist, 30 & 60¢.

Coughers find answer to \$64 question. "How can I get rid of my cough from a cold quicker?" The answer is—take plenty of terpins! They definitely help break up, throw off cough quicker. That's why so many doctors prescribe them—why the new Foley's Honey & Tar has been specially terpin-enriched. This improvement insures you more terpins than ever before to help you get well quicker. As heretofore, Foley's soothes throat, checks coughing, but now it also gives you plenty of terpins. * * *

Get well quicker from your cough due to a cold. Foley's Honey & Tar Cough Compound.

If you take Foley's Honey & Tar you may be pleasantly surprised at how much sooner you would get over such a cough. Speeded-up recovery is a special feature of Foley's Honey & Tar. As the result of making cough syrup for over 67 years, the Foley people know that cough sufferers want a cough syrup that does a whole lot more than soothe the throat and check coughing. We want one which will also help us get *over* our cough quicker. To meet this demand, the Foley people experimented until they finally developed such a cough syrup—a cough syrup which actually helps sufferers from coughs due to colds to recover quicker. * * *

Be more comfortable while you have a cough from a cold. Get over it quicker. Take Foley's Honey & Tar. You'll find it unsurpassed for the speed with which it soothes the rawness in your throat and quiets that cough-starting tickle. It's so effective that you'll start feeling better with the first spoonful of Foley's you take. Before you realize it, those harsh, wracking coughing spells will have ceased. * * * Even more important is the action which Foley's has on your bronchial tubes to help speed your recovery from your cough. For speedy relief and quicker recovery, take Foley's Honey & Tar. * * *

Check your cough from a cold before it gets worse. * * * Get after it with Foley's Honey & Tar Cough syrup. Do this—and you'll notice an improvement with the very first spoonful. Your throat will become more comfortable; the tickle will die down; your coughing spells will soon cease. While Foley's is unsurpassed for easing your throat and checking coughing spells, it is famous for its internal action by which the duration of the cough is definitely lessened.

With Foley's Honey & Tar ready and able to help you, don't suffer needless discomforts or let your cough hang on any longer than necessary. Get over it quicker by doctoring yourself with Foley's Honey & Tar.

A little over two years ago, a nationally known New York medical authority advised the makers of Foley's Honey & Tar that their cough syrup could be greatly improved if they added one newly developed ingredient. As the result, this authority was told to test out the improved Foley formula in a New York

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hospital under scientific conditions. The authenticated records of this test showed 41% of those suffering from coughs due to colds were benefited in 10 minutes by this improved formula, 35% more within 2 hours, and the remainder within 24 hours. In cases of sore throat, 60% benefited in 15 minutes. This new, improved formula is now embodied in Foley's Honey & Tar. Take advantage of this great step forward in a cough syrup and get well quicker. Throw off your cough in less time and suffer less. For speedy comfort and speeded-up recovery, go to your druggist now for a 30 or 60¢ bottle of Foley's Honey & Tar. But be sure to get this hospital-tested formula which gives so much quicker results, be sure to get Foley's—spelled F-O-L-E-Y—Foley's Honey & Tar.

PAR. 5. Through the use of the advertisements above set forth and others of like import, respondents have represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for coughs due to colds; that it will check coughs due to colds or shorten their duration; that its use, as directed, supplies a therapeutic dose of terpins; and that its therapeutic value has been proven clinically by a test made in a hospital.

PAR. 6. In fact the only value of respondent's preparation when taken by persons with a cold is as a palliative to bring about temporary symptomatic relief. There is no known medication which will cure or shorten the duration of a cold or the underlying causes of a cough due to a cold. While such a cough may be temporarily suppressed, the underlying causes will remain. The value of said preparation is limited to its demulcent and mild expectorant properties. A demulcent has the property of forming a protective coating over those areas of mucous membrane of the throat and pharynx with which it comes in contact when swallowed by the patient. This protective coating tends to prevent further irritation of the inflamed areas of the throat and pharynx until it is washed away by saliva and other secretions. Thus it tends to temporarily lessen the amount of coughing due to the irritation of these areas for a limited period of from two to fifteen minutes in most cases and never longer than one half hour from the time of taking. An expectorant has properties which modify the amount or content of the secretions of the respiratory tract. The value of such expectorant action in the treatment of a cough due to a cold is in dispute. But whatever the value of expectorants in sufficient dosage may be, the ingredients in respondent's preparation which have expectorant properties are not present in sufficient quantity to have more than a slight expectorant effect, if any, when taken as directed. Thus respondent's preparation does not constitute a remedy or an effective treatment for coughs due to a cold. Nor will it shorten the period of time during which such coughs will persist. Its sole value, when taken as directed for such coughs, is that it may lessen the occurrence and severity of coughing spells due to a cold for a period of not over one half hour from the time of taking.

The content of terpin hydrate in respondents' preparation is too small to constitute a therapeutic dosage or to have any beneficial effect in the treatment of a cough due to a cold, when taken as directed. The therapeutic value of respondents' preparation has not been proven clinically by tests conducted in a hospital.

PAR. 7. The complaint in this proceeding also alleged that respondents represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for colds and sore throat due to colds. The evidence of record is not sufficient to support these allegations of the complaint.

PAR. 8. The statements and representations referred to in Paragraphs Four and Five have been and are false and misleading, and the advertisements wherein such statements and representations were made were false advertisements. Respondents' use of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number of the public to purchase said preparation because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the 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.

Respondents contend that the order as recommended by the substitute hearing examiner would be improper and illegal in view of the fact that it is based solely upon a reading of the record by a hearing examiner who was not present at the taking of testimony. The final responsibility for the disposition of all cases coming before it, including the form of its orders to cease and desist, rests upon the Commission itself. Under the law the Commission not only has the right but has the duty to reach its own conclusions on the evidence regardless of the conclusions reached by the hearing examiner—even the hearing examiner who presided at the reception of evidence. While the Administrative Procedure Act requires that the same hearing examiner who presided at the reception of evidence must ordinarily prepare the recommended decision, an exception is made in any case where such hearing examiner has become available. Thus in this matter where the hearing examiner who presided at the reception of evidence becomes unavailable due to retirement, the procedure fol-

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lowed by the Commission in reaching its decision is in compliance with the statutory requirements.

Respondents further contend that the substitute hearing examiner was unable to take into consideration their proposed findings of fact, which had been given orally to the original hearing examiner at an unreported conference rather than in writing as required by the Commission's Rules of Practice governing this matter. It is noted, however, that respondents in their brief and oral argument have had full opportunity to present directly to the Commission any exceptions they have to the recommended decision and to make any relevant argument on any phase of this matter. Under these circumstances the Commission is of the opinion that its decision herein is proper and legal and that it has been reached in accordance with due process of law.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a hearing examiner of the Commission theretofore duly designated by it, the recommended decision of a substitute hearing examiner duly designated by the Commission (the hearing examiner originally designated herein being unavailable), briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Foley & Company, a corporation, and its officers, and A. M. Salomon, an individual, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated Foley's Honey and Tar Compound, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under such name or any other name, do forthwith cease and desist from:

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

- (a) That said preparation is a remedy or an effective treatment for coughs due to colds.

- (b) That the use of said preparation will shorten the total period during which coughing due to a cold will persist.

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(c) That the use of said preparation will have any value in the treatment of coughs due to a cold in excess of lessening the occurrence and severity of coughing spells for a period of not over one-half hour from the time of taking.

(d) That said preparation, taken as directed, supplies a therapeutic dose of terpin hydrate or that its terpin content would have any beneficial effect in the treatment of a cough due to a cold.

(e) That the therapeutic value of said preparation has been proven clinically by tests made in a hospital.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents 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 this order.

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IN THE MATTER OF
R. J. REYNOLDS TOBACCO COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4795. Order, January 17, 1952

Modified order eliminating the words "officers, agents, representatives and employees," and modifying testimonial prohibition in accordance with court's decree in proceeding in question—in which the Commission's original order issued on March 31, 1950, 46 F. T. C. 706 at 733, and in which the Court of Appeals for the Seventh Circuit, on November 1, 1951, in *R. J. Reynolds Tobacco Co. v. Federal Trade Commission*, 192 F. 2d 535, rendered its opinion and decision, "holding that the Commission was without authority to include in its order, 'officers, agents, representatives and employees,' in the absence of any finding other than those directed solely at the corporation," and that latter prohibition was too broad, and on December 7, 1951, entered its final decree modifying, and affirming as modified, the aforesaid desist order, pursuant to its said opinion—

Requiring respondent corporation, in connection with the offer, etc., in commerce, of its "Camel" brand of cigarettes, to cease and desist from representing that the smoking of such cigarettes encourages the flow of digestive fluids, relieves fatigue, etc., as in said order below set out; and from using in any advertising media testimonials of users or purported users which contain any of the prohibited representations.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward L. Smith for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, of Washington, D. C., and *Mr. P. Frank Hanes*, of Winston-Salem, N. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint, the report of the trial examiner upon the evidence and exceptions to such report, briefs in support of the amended complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on March 31, 1950; and

Respondent *R. J. Reynolds Tobacco Company*, having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein,

and that Court having heard the matter on briefs and oral argument and fully considered the matter, and having, thereafter on December 7, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on November 1, 1951:

Now, therefore, it is hereby ordered, adjudged, and decreed, That the respondent, R. J. Reynolds Tobacco Company, a corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Camel" brand of cigarettes, do forthwith cease and desist from representing, directly or by implication:

1. That the smoking of such cigarettes encourages the flow of digestive fluids or increases the alkalinity of the digestive tract, or that it aids digestion in any respect.

2. That the smoking of such cigarettes relieves fatigue, or that it creates, restores, renews, gives, or releases bodily energy.

3. That the smoking of such cigarettes does not affect or impair the "wind" or physical condition of athletes.

4. That such cigarettes or the smoke therefrom will never harm or irritate the throat, nor leave an aftertaste.

5. That the smoke from such cigarettes is soothing, restful or comforting to the nerves, or that it protects one against nerve strain.

6. That Camel cigarettes differ in any of the foregoing respects from other leading brands of cigarettes on the market.

7. That Camel cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or the smoke therefrom of any of the four other largest selling brands of cigarettes.

And it is hereby further ordered, adjudged, and decreed, That said respondent, R. J. Reynolds Tobacco Company, a corporation, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Camel" brand of cigarettes, do forthwith cease and desist from using in any advertising media testimonials of users or purported users of said cigarettes which contain any of the representations prohibited in the foregoing paragraph of this decree.

And it is hereby further ordered, adjudged, and decreed, That within ninety (90) days after the entry of this decree the petitioner shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

IN THE MATTER OF
WARNER ELECTRIC COMPANY ET AL.

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

Docket 5582. Complaint, Sept. 21, 1948—Decision, Jan. 28, 1952

Where a corporation and its two officers, engaged in the interstate sale and distribution of their "Warner Brush Electroplater"; in advertising in newspapers, and periodicals, circulars, pamphlets and other advertising literature, directly or by implication—

(a) Represented that the results obtained through the use of their machine equalled those obtained through the use of the conventional tank or immersion method of electroplating;

The facts being that while the brush method serves a useful purpose within its field, it is incapable of accomplishing results equal to those accomplished by the tank method or conventional way of electroplating, in wide use in the trade and capable of handling almost any type of work;

(b) Falsely represented that the brush method of electroplating works as well on rough as on smooth surfaces, and as well in deep recesses and on irregular shapes as on flat, smooth surfaces and regular shapes; the facts being that, generally speaking, it works satisfactorily only on surfaces which are relatively small and smooth and which do not have deep recesses or complicated or irregular shapes; and

(c) Falsely represented that said method of electroplating was new or a new invention; the facts being that while their machine and accompanying equipment possessed certain features and improvements which distinguished them from brush electroplater sets generally, the method or substantially similar methods had been in use for fifty years or more;

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

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

As respects other charges in the complaint to the effect that respondents falsely advertised that through use of their method it was easy and simple to plate metal articles; that special skill and knowledge was not required for satisfactory results; that worn articles could be replated by a stroke of the brush and that their method would chromium plate; that through doing work for others their device would pay for itself within a week; that a complete set of necessary tools and equipment was furnished purchasers; and that they were owners of a patent entitling them to exclusive use of the method concerned: the Commission was of the opinion that such charges were not sustained by the greater weight of the evidence.

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

Mr. Morton Nesmith and *Mr. George M. Martin* for the Commission.

Mr. William A. Romanek, of Chicago, Ill., for respondents.