

Syllabus

IN THE MATTER OF
NORLON CORPORATION 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 5741. Complaint, Feb. 20, 1950—Decision, May 1, 1952

The terms "arthritis" and "rheumatism" are general terms sometimes used interchangeably, which may refer to many diseases or pathological conditions including sciatica, neuritis, lumbago and bursitis, all of which are characterized by such symptoms and manifestations as pain, stiffness and inflammatory and destructive changes in the joints and tissues of the body, and which, as pathological conditions, are of known as well as unknown origin.

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of a medicinal preparation designated "Sural"; in advertisements through radio broadcasts, in a newspaper of national circulation, and in a pamphlet distributed throughout the United States, directly or by implication—

- (a) Falsely represented that said preparation taken as directed constituted an adequate, effective and reliable treatment for, and would arrest the progress and correct the underlying causes of arthritis, rheumatism, bursitis, neuritis and sciatica;
- (b) Falsely represented that thus taken it constituted such a treatment for the symptoms and manifestations of said diseases and would afford complete and immediate relief from the aches, pains and discomforts thereof;

The facts being that there is no drug or combination of drugs which constitutes an adequate, effective or reliable treatment for any of the various forms of arthritis or rheumatism, or which can restore to normal the pathological changes which result from any such ailments; delay of proper diagnosis and appropriate treatment in such cases may result in irreparable crippling, especially in those forms caused by specific infections; and while said "Sural" might function as an analgesic and antipyretic, due to its salicylate content, it would have no significant effect upon severe pain, aches, and discomforts accompanying any such condition, but would afford temporary relief of only minor aches, pains, and discomforts;

- (c) Falsely represented that said preparation might be taken in large quantities over long periods of time without harmful effect;

The facts being that the only therapeutically operative ingredient in their said preparation was the salicylate, acetylsalicylic acid, commonly known as aspirin, and that salicylates may not be taken over long periods of time without the danger of incurring certain harmful effects;

- (d) Falsely represented that their said preparation was superior to and caused less gastric irritation than other salicylates; and
- (e) Falsely represented that they were the manufacturers of said preparation;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce its purchase of substantial quantities of their said product:

Complaint

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

In the aforesaid proceeding, while various of respondents' advertisements referred to said preparation as an anodyne and contained such statements as "Prompt relief of the pains of rheumatic ills", "For fast relief from the pains and misery of arthritis and rheumatism", and "Sural is not represented as a cure", such statements were less emphasized than the many others which represented and implied that the preparation was an effective treatment or remedy for rheumatic and arthritic conditions, and, in the light of their advertisements as a whole, did not restrict the represented efficacy of the preparation to the relief of pain alone.

Before *Mr. Clyde M. Hadley* and *Mr. Abner E. Lipscomb*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Harte & Natanson, 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 Norlon Corporation, a corporation, and E. Edward Shinkel, Milton L. Marks, Ralph S. Marks and John J. Anthony, individuals, 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 Norlon Corporation is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 5 West 46th Street, New York 19, New York.

The individual respondents, whose addresses are as follows: E. Edward Shinkel, 175 Riverside Drive, New York, New York; Milton L. Marks, 101 Willow Avenue, Larchmont, New York; Ralph S. Marks, 68 Pinebrook Drive, Larchmont, New York; and John J. Anthony, No. 1 Fifth Avenue, New York, New York, are officers of the corporate respondent. These individual respondents at all times mentioned herein formulated, directed and controlled the acts, policies and business affairs of the corporate respondent, including the acts and practices hereinafter mentioned.

PAR. 2. Respondents are now and have been for more than one year last past engaged in the business of selling and distributing a certain

1273

Complaint

drug product, as "drug" is defined in the Federal Trade Commission Act.

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

Designation: Sural.

Formula: Each tablet contains: Calcium Succinate and Acetylsalicylic Acid.

Directions: "Dosage—2 to 3 tablets 4 times daily—8 to 12 tablets a day. In order to insure prompt absorption it is recommended Sural be taken on an empty stomach."

Respondents cause and have caused their said product 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce between and among the various States of the United States. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents, subsequent to July 22, 1948, have disseminated and caused the dissemination of certain advertisements concerning Sural by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce directly or indirectly its purchase.

These advertisements include but are not limited to the following:

Radio continuities broadcast since June 22, 1948 over the following stations:

WONE—Dayton, Ohio.

KQV—Pittsburgh, Pa.

WEBR—Buffalo, N. Y.

WCBM—Baltimore, Md.

WFBR—Baltimore, Md.

WOL—Washington, D. C.

KCMO—Kansas City, Mo.

KHJ—Hollywood, Calif.

WHDH—Boston, Mass.

WNHC—New Haven, Conn.

WHB—Kansas City, Mo.

WPEN—Philadelphia, Pa.

WMGM—New York, N. Y.

A certain advertisement appearing in the Boston Sunday Advertiser, issue of April 24, 1949.

Pamphlet "How to get Prompt Relief from the Symptoms of Rheumatism and Arthritis."

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase

Complaint

48 F. T. C.

of Sural in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements, respondents have made, directly and by implication, the representations shown in the following sub-paragraphs identified as (A) to (F) inclusive. The said advertisements, by reason of said representations are misleading in material respects and constitute "false advertising" as that term is defined in the Federal Trade Commission Act, by reason of the true facts which are set forth in sub-paragraphs (1) through (6), inclusive.

(A) That Sural, taken as directed, is an adequate, effective and reliable treatment for arthritis, rheumatism, bursitis, neuritis and sciatica.

(1) Sural, however taken, is not an adequate effective or reliable treatment for any kind of arthritis, rheumatism, bursitis, neuritis or sciatica.

(B) That Sural, taken as directed, will arrest the progress of, correct the underlying causes of and will cure arthritis, rheumatism, bursitis, neuritis or sciatica.

(2) Sural, however taken, will not arrest the progress nor correct the underlying causes of and will not cure arthritis, rheumatism, bursitis, neuritis or sciatica.

(C) That Sural, taken as directed, is an adequate, effective and reliable treatment for the symptoms and manifestations of arthritis, rheumatism, sciatica, neuritis, lumbago and bursitis, and will afford complete and immediate relief from the aches, pains and discomforts thereof.

(3) Sural is not an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis, rheumatism, sciatica, neuritis, lumbago or bursitis. The aches, pains and discomforts incident to those ailments may be of such nature that they will be in no way alleviated by the use of Sural, however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effects as its aspirin content may afford in the individual case, aspirin being the common name for acetylsalicylic acid. The beneficial effect of Sural when used in any of the ailments mentioned herein is limited to temporary and partial relief of minor aches and pains and fever.

(D) That Sural may be taken in large quantities over long periods of time without harmful effect on the body.

(4) If taken in doses significantly larger than those specifically mentioned in the directions over a prolonged period of time, Sural may produce such toxic effects as ringing in the ears, deafness, nausea,

vomiting, visual disturbances, skin rash, headache, marked sweating and abnormally rapid breathing, as well as adversely affect the clotting of the blood.

(E) That Sural is superior to and causes less gastric irritation than other salicylates.

(5) Sural is not superior to nor does it cause less gastric irritation than other salicylates.

(F) That respondents are the manufacturers of Sural.

(6) Respondents are not the manufacturers of Sural but the product is manufactured for them by others.

PAR. 5. The use by respondents of the said false advertisements with respect to Sural has had the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into the purchase of substantial quantities of Sural by reason of such erroneous and mistaken belief.

PAR. 6. 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 AND ORDER OF THE COMMISSION

Decision of the Commission, following its extension of the otherwise effective date of the hearing examiner's initial decision in the matter, and order to file report of compliance, dated May 1, 1952, follow:

Service of the initial decision of the hearing examiner in this proceeding having been completed on March 19, 1952, and the Commission having on April 17, 1952, extended until further order of the Commission the date on which the said initial decision would otherwise become the decision of the Commission; and

The Commission having duly considered the record herein and being of the opinion that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 1st day of May, 1952, become the decision of the Commission.

It is further ordered, That the respondents Norlon Corporation, Milton L. Marks, and Ralph S. Marks, 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.

Findings

48 F. T. C.

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

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 20, 1950, issued and subsequently served its complaint in the above-entitled proceeding upon respondents Norlon Corporation, a corporation, and E. Edward Shinkel, Milton L. Marks, Ralph S. Marks and John J. Anthony, individually and as officers of said corporate respondent. After the issuance of said complaint and the filing of respondents' answer thereto, counsel for the respondents entered into a stipulation with counsel supporting the complaint, wherein it was stipulated and agreed that the entire transcript of all hearings held and to be held in the proceeding against Dolcin Corporation, et al., Docket No. 5692, should become a part of the record in the above-entitled proceeding to the same extent as if such transcript had been received in regular course of hearings herein, and that the above-entitled proceeding might be adjudicated upon the basis of such transcript, supplemented by the stipulations between counsel contained in the record in the above-entitled proceeding. Thereafter this proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, the above-mentioned transcript and stipulations, the presentation of proposed findings as to the facts and conclusions having been waived by counsel, and said hearing 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 Norlon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 5 West 46th Street, New York 19, New York.

Respondents E. Edward Shinkel, 175 Riverside Drive, New York, New York; Milton L. Marks, 101 Willow Avenue, Larchmont, New York; Ralph S. Marks, 68 Pinebrook Drive, Larchmont, New York; and John J. Anthony, 1 Fifth Avenue, New York, New York, are individuals and officers of the corporate respondent, and at all times mentioned herein have formulated, directed and controlled the acts, policies and business affairs of the corporate respondent, including the acts and practices hereinafter found.

Respondents E. Edward Shinkel and John J. Anthony, individuals, shortly after the issuance of the complaint herein ceased to be officers of the respondent corporation, to own any stock therein, or to formulate, direct or control in any way the acts, policies or practices of said corporate respondent. Predicated upon these facts, a motion was made by counsel for respondents, and concurred in by counsel supporting the complaint, to dismiss the complaint herein as to said individual respondents, E. Edward Shinkel and John J. Anthony, without prejudice to the right of the Commission to institute further proceedings against them, should future fact so warrant.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the offering for sale, sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a certain medicinal preparation designated "Sural," which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains substantially the following:

Calcium succinate.....	2.8 grains.
Acetylsalicylic acid	3.7 grains.
Plus excipients.	

Directions for use:

"Dosage—2 to 3 tablets 4 times daily—8 to 12 tablets a day. In order to insure prompt absorption it is recommended Sural be taken on an empty stomach."

Respondents cause the said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents, subsequent to July 22, 1948, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements of the drug preparation "Sural," for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase; and have disseminated and caused the dissemination of such advertisements for the purpose of inducing, and

Findings

48 F. T. C.

which were likely to induce, directly or indirectly, the purchase of said drug preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among such advertisements were radio broadcasts disseminated subsequent to June 22, 1948, by various broadcasting stations, and advertisements published in a certain newspaper having national circulation and in a pamphlet distributed throughout the United States. Typical of the statements and representations contained in such advertisements are the following:

The Norlon Corporation, Exclusive Manufacturers and Distributors of Sural.

Doctors' Amazing Prescription Formula For
RHEUMATISM, ARTHRITIS

Promises Quick, Blessed Relief—Safe, Effective

Now, thanks to biochemical research, you need no longer suffer the agony and torment of the pains of Arthritis, Rheumatism, Bursitis, Neuritis or Sciatica.

Clinically Developed.

An amazing hospital-tested formula has now been clinically developed for the prompt relief of the pains of rheumatic ills. This same type of scientific treatment is now available to you in an easy-to-take tablet called SURAL. . . .

SURAL is the only thing I've ever found that really lived up to its promise to relieve my arthritic pains. Before using SURAL tablets, I tried everything without success. Now, after using SURAL, my pains are only a memory.

Doctors say that the best treatment for rheumatic ills includes the use of salicylates—and an eminent physician recently stated the Sural, quote "does better than other salicylates and with less gastric irritation." Unquote.

Get started on your SURAL treatment immediately—and once again enjoy a normal, active life. SURAL is now available at all drug stores. Insist on SURAL!

For over 20 years I've looked for relief from my rheumatic pains. Now, thanks to SURAL, I no longer have any pains in my legs. Though I've been inactive for several months, I'm now back on the job again.

Begin taking SURAL today and start back on the road to genuine relief and a happy carefree life. At all drug stores *now*. Insist on SURAL, the remarkable anodyne!

Go to your druggist *today* and get a bottle of SURAL tablets. Get started on your SURAL treatment immediately and you, too, may join the many, many men and women who now lead a happy, carefree life and once again are able to return to their former occupations. Insist on SURAL!

FOR RHEUMATOID ARTHRITIS CASES

In the comparatively rare cases of Rheumatoid Arthritis, this severe pain can be and frequently is relieved. In some instances, too, stiffness may be overcome after prolonged administration of SURAL. This is of tremendous importance, because, even though, as I've explained, SURAL has been designated for action—prompt action—the fact that it has no harmful effects, makes this amazing preparation ideal for *prolonged* administration as is frequently necessary in chronic and severe cases of Arthritis and Rheumatism.

I stress this point because the scientific world is aware of some medications, which are not only a great deal more expensive, but which have been known to have harmful effects on the body when taken in *large quantities* over a prolonged period. So when I speak of SURAL'S freedom from these hazards and its efficiency. I'm sure you'll understand why so many former sufferers of Rheumatic and Arthritic pains are singing the praises of SURAL.

Each package of SURAL contains a complete direction leaflet, which will guide you in using it correctly. This is important because we know that when SURAL is used according to these simple directions, in many cases it has succeeded in bringing relief from stiffness, while at the same time folks have reported they've gotten prolonged relief from pain.

PAR. 4. Various of respondents' advertisements refer to the drug preparation "Sural" as an anodyne, and contains such statements as ". . . prompt relief of the pains of rheumatic ills," "For fast relief from the pains and misery of arthritis and rheumatism," and ". . . Sural is not represented as a cure. . . ." Such statements and others similar thereto are, however, less emphasized than the many other statements representing and implying that said preparation is an effective treatment or remedy for rheumatic and arthritic conditions, and, in the light of respondents' advertisements as a whole, do not restrict the represented efficacy of said preparation to the relief of pain alone.

To assert that a preparation is "For Rheumatism, Arthritis" is to imply that such preparation is an effective treatment or remedy therefor. The statement "Begin taking Sural today and start back on the road to genuine relief and a happy, carefree life" implies successful treatment and cure, since "genuine relief" and "a happy, carefree life" denote complete freedom from any ailment whatsoever. Furthermore, the statement that "in many cases" Sural has "succeeded in bringing relief from stiffness" is a clear representation that the drug preparation "Sural" is an effective remedy for the underlying causes of such stiffness.

The representation that other medications are known to have harmful effects on the body "when taken in large quantities over prolonged periods" implies that the drug preparation "Sural" may be taken in large quantities over a prolonged period of time without harmful effects on the body. In addition, said preparation is directly represented as an "amazing preparation ideal for prolonged administration . . ." Accordingly, it is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly or by implication, as follows:

1. That the drug preparation "Sural," taken as directed, is an adequate, effective and reliable treatment for arthritis, rheumatism, bursitis, neuritis and sciatica;

Findings

48 F. T. C.

2. That said preparation, taken as directed, will arrest the progress and correct the underlying causes of, and will cure, arthritis, rheumatism, bursitis, neuritis and sciatica;

3. That said preparation, taken as directed, is an adequate, effective and reliable treatment for the symptoms and manifestations of arthritis, rheumatism, sciatica, neuritis, lumbago and bursitis, and will afford complete and immediate relief from the aches, pains and discomforts thereof;

4. That said preparation may be taken in large quantities over long periods of time without harmful effect on the body;

5. That said preparation is superior to and causes less gastric irritation than other salicylates;

6. That respondents are the manufacturers of said preparation.

PAR. 5. The terms "arthritis" and rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions including, among others, sciatica, neuritis, lumbago, and bursitis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body. These pathological conditions are of known as well as unknown origin. Examples of those of unknown origin are rheumatoid arthritis, osteomyelitis and rheumatic fever. Examples of such conditions of known causes are infectious arthritis, such as arthritis of syphilis, arthritis of gonorrhea, and arthritis associated with pneumonia and tubercular infections. In addition there are forms of arthritis, such as gout, which are connected with disturbances of metabolism.

The term "neuritis" is a general term referring to an inflammation of the nerves, and denotes many different diseases resulting from various causes, such as infections, pressure on nerves from displaced organs or structures of the body, invasion of the nerve by neoplasm or tumor, intoxication with metals or toxins, and metabolic disturbances such as the form of neuritis occurring in diabetes.

Sciatica is a common form of neuritis felt along the course of the sciatic nerve. It is not a disease, but may occur as a symptom of many different diseases resulting from various causes, such as pressure on the sciatic nerve, a tumor in the spine, infection or inflammation of the sheath of the sciatic nerve, metabolic disturbances caused by toxins resulting from infection, fibrositis or arthritis involving the joints.

Fibrositis is a syndrome of pain and stiffness which arises in the fibrous tissues of the body.

Lumbago is a form of fibrositis manifesting itself as a painful condition in the lower part of the back, of varying severity, sometimes so mild as hardly to interfere with a man's business, in other instances

so violent as to render him unable to move in bed. Lumbago is associated with stiffness and muscle spasm provoked by attempts to move.

Bursitis is a form of fibrositis having specific reference to inflammation of a bursa, the fibrous sac or membrane surrounding a joint, and may result from invasion of the bursa by various germs, such as streptococcus, mycobacterium, gonococcus, and the tubercular bacillus, and from rheumatic or fibrositic inflammation.

Infectious arthritis is a form of arthritis resulting from invasion of a joint by any one of various germs, such as staphylococcus and streptococcus, which are carried to the joint through the bloodstream from a focus of infection in the body, caused by an external wound or by various infectious diseases.

Osteoarthritis refers to a disease characterized by degenerative changes in the joints and other tissues and organs of the body. The clinical phenomena associated with osteoarthritis are pain, painful stiffness associated with movement of the joint, enlargement of some joints, narrowing of joint spaces, increase in size of joint surfaces, growth of spurs and increase in the extent of margins of the joint.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

PAR. 6. The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, par-

Findings

48 F. T. C.

ticularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

PAR. 7. An adequate, effective, or reliable treatment of any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measure, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; and medication. Delay of proper diagnosis, with consequent failure to administer appropriate treatment, may result in the evolution of irreversible pathological changes, causing a crippled, useless joint or extremity, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

PAR. 8. The drug preparation "Sural" contains 2.8 grains of calcium succinate and 3.7 grains of acetylsalicylic acid, plus excipients of no therapeutic significance.

Calcium succinate, when taken orally, is converted by the liver into sugar, and no significant amount of succinate reaches the bloodstream. In order to be therapeutically operative in the body, succinates must be administered intravenously. When present in sufficient concentration to be operative, the effect of succinates on tissue metabolism is harmful. The quantity of calcium succinate contained in the drug preparation "Sural" is entirely too small to achieve or maintain a sufficient concentration in the body to have any effect whatever on the metabolism of the tissues.

Since calcium succinate, administered orally, is therapeutically inoperative, the only active ingredient contained in the drug preparation "Sural" is acetylsalicylic acid, commonly known as aspirin, the use and effect of which, as an analgesic and antipyretic, have been known for many years.

The drug preparation "Sural" contains acetylsalicylic acid in an amount insufficient to relieve the severe aches, pains and discomforts attendant upon arthritic and rheumatic conditions. The quantity of acetylsalicylic acid therein contained may, however, function as an

analgesic and antipyretic to a sufficient extent to afford temporary relief to the minor aches and pains accompanying arthritis and rheumatism.

PAR. 9. The drug preparation "Sural," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including, among others, sciatica, neuritis, lumbago, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any of such conditions. The drug preparation "Sural," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Sural," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary relief of only minor aches, pains and discomforts. With the exception of such temporary relief, the drug preparation "Sural" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including, among others, sciatica, neuritis, lumbago, and bursitis.

PAR. 10. The use of salicylates over long periods of time will tend to produce harmful effects upon the body, such as hypoprothrombinemia, or a tendency to prolong bleeding by delaying the formation of blood clots. In addition, salicylates may have toxic effects upon the body, mild manifestations of which are gastrointestinal upsets and ringing in the ears. More severe manifestations may be hemorrhage and destruction of tissue. Salicylates may not be taken over prolonged periods of time without the danger of incurring such harmful effects.

Since the only therapeutically operative ingredient in the drug preparation "Sural" is the salicylate, acetylsalicylic acid, commonly known as aspirin, said preparation may not be taken over long periods of time without the danger of incurring the same harmful effects upon the body which would result from similar use of other salicylates; nor can such preparation be taken safely by persons adversely affected by aspirin.

PAR. 11. Respondents are not the manufacturers of the drug preparation "Sural."

PAR. 12. Respondents' representations concerning the drug preparation "Sural," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such

Order

48 F. T. C.

representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The 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 meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Norlon Corporation, a corporation, and Milton L. Marks and Ralph S. Marks, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Sural," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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 by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for sciatica, neuritis, lumbago, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, sciatica, neuritis, lumbago, bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any relief of severe aches, pains, and discomforts of sciatica, neuritis, lumbago, bursitis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches, pains, or fever;

(d) that said preparation may safely be taken over prolonged periods of time;

(e) that said preparation is superior to and causes less gastric irritation than other salicylates;

(f) that respondents are the manufacturers of said preparation.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce,

1273

Order

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents E. Edward Shinkel and John J. Anthony, without prejudice to the right of the Commission to institute further proceedings against them, should future facts so warrant.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents Norlon Corporation, Milton L. Marks, and Ralph S. Marks, 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 decision and order of the Commission].

IN THE MATTER OF
RAY MERTZ TRADING AS RAY MERTZ & COMPANY

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

Docket 5911. Complaint, Aug. 8, 1951—Decision, May 5, 1952

Where an individual engaged in the manufacture and interstate sale of various kinds of push cards, which, bearing explanatory legends or space therefor, were designed for and used only in the sale of merchandise to the consuming public through means of games of chance, under plans whereby, as typical, the price paid by purchasers for an article was determined by the push selected by chance, or whereby the purchasers who, by chance, selected a certain one of various feminine names displayed, received, without additional cost, an article of merchandise, the normal retail price of which exceeded the chance determined price of the push, others receiving nothing for their money other than the privilege of a push or punch or in some cases, a small piece of candy of less value—

Sold and distributed such devices to dealers in candy, cigarettes and other articles, assortments of which, along with said devices, made up by the dealers, and were exposed and sold by the direct or indirect retailer purchasers to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government, and in violation of criminal laws; and means and instrumentalities for engaging in unfair acts and practices;

With the result that many members of the purchasing public were induced, because of the element of chance involved, to trade or deal with retailers who thus sold or distributed their merchandise; and many retailers were induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed such assortments:

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

In said proceeding the only testimony offered by respondent in his defense—to the effect that competition in either the wholesale or retail sale of merchandise was not affected by the sale of punchboards in commerce, that the use thereof in the sale of merchandise did not divert trade, and that, consequently, their use did not constitute an unfair method of competition—was rejected as immaterial and irrelevant to the issues in the instant proceeding, since the complaint did not charge respondent with the use of such methods, but only with the use of unfair acts and practices in commerce.

Before *Mr. Frank Hier*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. F. W. James, of Evanston, Ill., for respondent.