

Syllabus

IN THE MATTER OF

RHODES PHARMACAL COMPANY, INC., J. SANFORD
RHODES AND JEROME H. RHODES

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

Docket 5691. Complaint, Aug. 17, 1949—Decision, Oct. 3, 1952

As regards the characterization of a medicinal preparation as a new discovery, on the basis of the inclusion along with an ingredient which had been used for years by the medical profession, of other ingredients which had no beneficial effect: the fact, as contended, that the combination was unique did not make the resultant preparation a remarkable, amazing, sensational new discovery of scientific research.

With respect to the use of the word "temporary" in cease and desist orders having to do with the false advertisement of medicinal preparations: the Commission is of the opinion that advertising claims should always be so limited where only temporary relief is afforded unless, by the very nature of the claim, there is no real danger of deception.

The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by such symptoms 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 manufacture and interstate sale and distribution of their "Imdrin" medicinal preparation; in advertisements through broadcasting stations and in various newspapers circulated throughout the United States, directly and 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, all forms of rheumatism and arthritis, including neuritis, sciatica, gout, fibrositis, and bursitis, and would cure all forms of such diseases or afflictions; and
- (b) Falsely represented that, thus taken, it constituted such a treatment for the symptoms and manifestations of all said diseases or afflictions and would afford complete, permanent relief for 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 resulting pathological changes; delay of needed treatment in such cases may result in irreparable crippling, especially in those forms caused by specific infec-

Syllabus

49 F. T. C.

tions; any relief afforded by its salicylate content, as an analgesic and antipyretic, would have no significant effect upon severe pains, aches and discomforts but would afford temporary and partial relief of only minor ones, and, with said exception, it could not be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition;

- (c) Falsely represented that said preparation constituted a remarkable, amazing, sensational new discovery of scientific research;

When in fact the only beneficial ingredients contained therein were manganese salicylate and acetylsalicylic acid (or "aspirin"), use and effect of which as analgesics and antipyretics had been known for many years;

- (d) Falsely represented that by taking said preparation as directed persons suffering from any or all of the aforesaid diseases or afflictions would be enabled to resume their normal habits of life and their regular occupations;

The facts being, in addition to those above set forth, that while it is possible to restore to normal certain of such pathological changes as may have occurred due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin, the vitamin thiamine chloride, contained in Imdrin, was insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency; and

- (e) Falsely represented that its taking as directed would correct any disturbance of the vital enzyme systems of the blood and bones and would insure their adequate functioning;

The fact being that the ingredient calcium succinate, when administered orally, does not reach the blood stream;

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

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

As respects respondents' contention that their representations meant only that Imdrin would provide relief from pain of arthritis or rheumatism and not that they would provide treatment or cure in the sense of removing the basic causes: said contention was not tenable in view of their statements that it would do more than relieve pain, would reduce swelling, and act to uncork the joints, would find the poisons and toxins that caused the pain, and was a remarkable research discovery comparable to sulfa and penicillin—statements through which they represented and implied that it was a newly discovered drug which constituted an effective treatment and would cure arthritic and rheumatic conditions, in addition to representing that its use would afford relief from the aches and pains caused by such conditions.

In the aforesaid connection respondents, through such specific statements in their various advertisements as "no faster arthritic pain remover known", failed to qualify sufficiently the use of the word "remedy" and to qualify or restrict their other broader representations as to the product being an effective medication for rheumatic and arthritic conditions.

With respect to the results of a survey offered by respondents to show that their advertisements meant only that "Imdrin" would provide relief from the pain of said conditions: such survey was improperly designed to determine whether the advertisements represented that the preparation would provide both a cure and pain remover, since all of their advertisements claimed such relief and their survey implied by the form of their questions that the advertisements represented either that "Imdrin" would provide pain relief or would provide a cure.

As further respects the aforesaid survey which showed that 9% of those questioned stated that the advertisements represented that the preparation would provide a treatment and cure for arthritis and rheumatism: such a number alone, aside from the objections above noted, would constitute a sufficient showing of the deceptive nature of respondents' advertisements.

While it was claimed from testimony presented by respondents' witnesses as to improvement in their conditions upon taking said product: such testimony, due to the uncertainty of the proof as to the cause of said witnesses' original condition, and the proof that the use of "Imdrin" was the cause of their improvement, was not sufficient to offset that of outstanding experts to the effect that temporary and partial relief of less severe pain and fever are the only effects possible from its use, as directed, by persons suffering from arthritic or rheumatic conditions, since the salicylate, its only ingredient with any beneficial effect, has no therapeutic value in the treatment of such diseases, and no beneficial effect upon its symptoms other than to afford a temporary and partial relief from the less severe pains and fevers caused thereby.

Respondents' contention that they should not be restricted to representing that Imdrin's only therapeutic effect upon the symptoms of said conditions was temporary and partial relief of minor aches, pains and fever, since the prohibition was not supported by the facts of record, was not tenable in view of the fact that the expert medical testimony was unanimous that 20.4 grains of salicylate-containing compounds, the aggregate dosage provided by taking six tablets a day as directed, was not a sufficient daily dosage to relieve the more severe pains which result from the conditions in question; and the greater weight of such testimony, including that of respondents' witnesses, was that said amount constituted too low a daily dosage for complete relief from pains accompanying an average case.

Respondents' further contention in the same connection, that, in a prior case involving the preparation "Dolcin" (Docket 5692, in which order later issued on Dec. 2, 1952) where the quantity of salicylate in each tablet was comparable to that in Imdrin, the hearing examiner concluded that the dosage involved would provide complete but temporary relief from the minor pains accompanying the conditions involved, was not tenable in view of the fact that the dosage recommended for acute symptoms was double that recommended for Imdrin.

With respect to respondents' objection to the use of the word "temporary" in the hearing examiner's order as unnecessary and as uncertain in its mean-

Complaint

49 F. T. C.

ing: respondents by limiting the type of pain relief involved in the instant matter implied that lasting effect would be achieved by eliminating the cause of the pain, and decisions of the court which have considered the question and permitted the use of the word in certain orders while eliminating it in others are in the main distinguishable by such permitted use in those cases in which the representations imply that the relief or removal of the symptoms would be effected by the elimination of its cause, in which event the courts have held that the requirement that the representations be limited to claiming temporary relief or removal of the symptoms constituted a proper prohibition.

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

Mr. Joseph Callaway for the Commission.

Frank E. & Arthur Gettleman and *Mr. Edward Brodkey*, 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 Rhodes Pharmacal Company, Inc., and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., 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 Rhodes Pharmacal Company, Inc. is a corporation organized under the laws of the State of Ohio, and having its office and principal place of business at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose are respectively the President and the Vice President and Treasurer of Rhodes Pharmacal Company, Inc. and have offices and places of business at 1814 East 40th Street, Cleveland, Ohio. The said individual respondents are now and at all times mentioned herein have been in control of the management, policies and operation of Rhodes Pharmacal Company, Inc., particularly in respect to the acts, practices and methods herein alleged.

PAR. 2. Respondents are now, and have been for more than six months last past, engaged in the business of manufacturing, selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

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

Complaint

Designation: Imdrin.

Formula: Each tablet contains—

Acetylsalicylic acid.....	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous).....	2.3 grains
Caffeine	0.16 grain
Thiamine chloride.....	1 mg.

Directions: Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio 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 the 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, sales for the last quarter of 1948 being in excess of \$250,000.00.

PAR. 3. In the course and conduct of their business the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Imdrin 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 its purchase.

Among their advertisements are the following:

Radio continuities which were placed subsequent to September 1, 1948, for respondents by their advertising agency with, and broadcast by various radio broadcasting stations, including, but not limited to, the following stations:

WJJD—Chicago, Ill.
 WHN—New York, N. Y.
 WPIX—New York, N. Y.
 WOV—New York, N. Y.
 KWTO—Springfield, Mo.
 KWKH—Shreveport, La.
 WWVA—Wheeling, W. Va.

Advertisements which were prepared subsequent to September 1, 1948, for respondents by their advertising agency, and published or caused to be published by said respondents in various newspapers, including, but not limited to the following newspapers and issues thereof:

Washington (D. C.) Times Herald—Issues of March 11, 24, and April 18, 1949.

Washington (D. C.) Daily News—Issue of March 15, 1949.

Complaint

49 F. T. C.

Washington (D. C.) Post.
Baltimore (Md.) Sun.
Philadelphia (Pa.) Bulletin.
Philadelphia (Pa.) Inquirer.
Birmingham (Ala.) News Age Herald.
Cleveland (Ohio) Plain Dealer—Issues of January 9, 16, 23, 30, February 6, 13, 1949.
Syracuse (N. Y.) Herald Journal—Issue of February 17, 1949.
Rochester (N. Y.) Times—Issue of January 27, 1949.
Bluefield (W. Va.) Daily Telegraph—Issue of April 1, 1949.
Seattle (Wash.) Daily Times—Issue of March 11, 1949.
Atlanta (Ga.) Constitution—Issue of March 10, 1949.
Washington (D. C.) Star—Issues of April 26, 19, 1949.
Indianapolis (Ind.) News—Issue of February 15, 1949.
Baltimore (Md.) American—Issue of May 7, 1949.
New Orleans (La.) States—Issues of November 18, 1948, and April 27, 1949.
South Bend (Ind.) Tribune—Issues of February 13, 1949, and March 27, 1949.
Shreveport (La.) Times—Issue of March 13, 1949.
Baltimore (Md.) News-Post—Issue of January 14, 1949.
Syracuse (N. Y.) Herald Examiner—Issue of January 16, 1949.
St. Louis (Mo.) Globe Democrat—Issue of February 13, 1949.
Clarksburg (W. Va.) Exponent-Telegram—Issue of March 13, 1949.
Rochester (N. Y.) Sun—Issue of April 14, 1949.
Boston (Mass.) Daily Record—Issue of March 15, 1949.
St. Paul (Minn.) Pioneer Press—Issue of January 23, 1949.
New York (N. Y.) Sunday News—Issues of January 16, 30, 1949, February 27, 1949, and May 15, 1949.
Cedar Rapids (Iowa) Gazette—Issue of March 13, 1949.
Springfield (Ill.) Illinois State Journal—Issue of January 21, 1949.
Louisville (Ky.) Times—Issue of February 11, 1949.
Chicago (Ill.) Tribune—Issues of January 1, 19, 21, 26, 28, 31, February 4, 7, 9, 12, 13, 21, March 6, 13, 27, 30, and April 19, 1949.
Counter cards and folders.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and the said advertisements were likely to induce, directly or indirectly, the purchase of Imdrin in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the 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 the said representations, are misleading in material respects and constitute "false advertisements" 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) to (7) inclusive.

(A) That Imdrin is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis.

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

(B) That Imdrin will arrest progress of, correct the underlying causes of and cure all kinds of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis.

(2) Imdrin, however taken, will not arrest the progress of, correct the underlying causes of, and will not cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis.

(C) That Imdrin is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, and will afford complete and immediate relief from the aches, pains, and discomforts thereof.

(3) Imdrin, however taken, is not an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; the aches, pains and discomforts incident to those ailments may be of such a nature that they will be in no way alleviated by the use of Imdrin, 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 content of acetylsalicylic acid, commonly known as aspirin, and manganese salicylate may afford in the individual case.

(4) The effect of Imdrin 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 Imdrin is a remarkable, amazing, sensational new discovery of scientific research.

(5) Neither the composition nor the effects of Imdrin is remarkable, amazing or sensational.

Order

49 F. T. C.

(E) That by taking Imdrin those afflicted with the ailments mentioned herein will be enabled to resume their normal living and usual occupations.

(6) Persons afflicted with these ailments so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will not be enabled to resume such habits or occupations by taking Imdrin.

(F) That Imdrin will correct any disturbance of, and will insure adequate function of, the vital enzyme systems of the blood and bones.

(7) Imdrin, however taken, will not correct disturbances of, nor insure adequate function of, the enzyme systems of the blood or bones.

PAR. 5. The use by respondents of the said false advertisements with respect to Imdrin 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 Imdrin by reason of said 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.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5691, October 3, 1952, follows:

This matter having come on to be heard by the Commission upon respondents' appeal from the initial decision of the hearing examiner, briefs in support of and in opposition to said appeal and oral argument of counsel; and

The Commission, upon consideration of the entire record herein, having decided, for the reasons stated in the written opinion of the Commission which is being issued simultaneously herewith, that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist therein is proper upon this record and is required to provide proper relief from respondents' illegal practices; and

The Commission, therefore, being of the opinion that respondents' appeal from and exceptions to the hearing examiner's initial decision

are of no merit and that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the appeal of respondents from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall on the 3rd day of October, 1952, become the decision of the Commission.

It is further ordered, That respondents, Rhodes Pharmacal Company, Inc., J. Sanford Rose and Jerome H. Rose, 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 contained in said initial decision, a copy of which is attached hereto.

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

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 August 17, 1949, issued and subsequently served its complaint in this proceeding upon respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and 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

49 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Rhodes Pharmacal Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose, individuals, are now and at all times mentioned herein have been, respectively, the president, and the vice president and treasurer, of said corporate respondent, Rhodes Pharmacal Company, Inc., with their offices located at the principal place of business thereof, and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the manufacture, 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 "Imdrin," 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:

Acetylsalicylic acid.....	1.9 grains
Manganese salicylate.....	1.5 grains
Calcium succinate (anhydrous).....	2.3 grains
Caffeine	.16 grains
Thiamine chloride.....	1 mg.

Directions:

Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio 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 the 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, sales for the last quarter of 1948 being in excess of \$250,000.00.

PAR. 3. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in com-

merce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements of the drug preparation "Imdrin," for the purpose of inducing, and which were likely to induce, its purchase. Among such advertisements were radio broadcasts disseminated subsequent to September 1, 1948, by various broadcasting stations, and advertisements published subsequent to September 1, 1948, in various newspapers circulated throughout the United States. Typical of such advertisements are the following:

AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS

No Faster Arthritic Pain Relief Known

SAFE * * * HOSPITAL TESTED

Stops Swelling . Uncorks Joints . Contains

Sensational New Research Discovery

Picturization of
hand containing
tablet

New, Safe, Scientific Tablet

Not a Narcotic * * * Not Habit Forming * * *

AT LAST THE STORY CAN BE TOLD! Science has turned its attention to relieving the agonizing pains of rheumatism and arthritis. The result of extensive research is the remarkable preparation IMDRIN. Long-time sufferers from rheumatism, arthritis, neuritis and gout may find IMDRIN gives glorious relief amazingly fast. Contains no dope or harmful drugs. Ask for IMDRIN at drug stores.

Picturization of
scientist examining
test tubes

Developed after 3 Years of Extensive
Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, etc., should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture!

Findings

49 F. T. C.

* Picturization of man in
wheel-chair

"I call IMDRIN a miracle and you can understand why when I tell you that the pain which had tortured and crippled me was gone after I had taken IMDRIN. Now, for the first time in years, I can move about without pain and enjoy life once again. Surely the thousands of unfortunates like me should be happy to learn about the blessed, fast-acting IMDRIN." A. C., Chicago, Ill.

* Picturization of old woman
invalid

"I had arthritis and rheumatism so bad I could hardly get around. In fact, I went to several doctors who told me that my case was hopeless and that they could do nothing for me. Well, I had about given up hope when I saw your ad in the paper and bought a bottle of IMDRIN. I really think it's a wonder. I feel better with every dose I take. It seems like a dream to be free of so much pain." Mrs. A. R. Webb 311 N. Bryan St., Amarillo, Texas.

* Picturization of woman
apparently suffering

"Even though my daughter is a registered nurse she could not find anything to help her agonizing arthritic pains. She tried everything but nothing did her any good. Then she bought IMDRIN and she has had miraculous results. I am going to tell all my friends about the wonderful relief from IMDRIN. It really is an amazing remedy." Mrs. C. C., Kunkletown, Pa.

Picturization of anatomical
chart with arrows showing
location of joints and
muscles

Where Rheumatism Strikes * * * And How to Detect It!

Rheumatic and arthritic pain and inflammation strikes any of the indicated areas. (See chart above.) But these diseases have many forms and symptoms.

All forms of arthritis and rheumatism are accompanied by pain, very often swelling and loss of function of the joints. Hospital test patients receiving IMDRIN were able to resume more happy active living once the pain subsided and their confidence grew. IMDRIN reduced joint swelling and eased pain rapidly. IMDRIN is your greatest hope. IMDRIN may give you the same blessed results. Get IMDRIN today!

How IMDRIN Helps You!

If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness * * * if you get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year * * * listen! IMDRIN may answer your problem of comfortable living. In case after case IMDRIN has proved its potency. IMDRIN is one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hope-

*Posed by professional models.

263

Findings

less * * * persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement * * * and back it up with proven hospital and clinical records. Amazing new IMDRIN brings new hope of a better life for you * * * and it is as close to you right now as your nearest drug store. Get IMDRIN today. Use only as directed. If you don't agree that amazing new, scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN today—resume comfortable living tonight!

TODAY—RESUME CONFIDENT, PAIN-FREE LIVING WITH AMAZING NEW, SAFE, AND SCIENTIFIC * * *

IMDRIN contains no dope or harmful drugs * * * is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

(Picture and one additional testimonial omitted).

IMDRIN
No Faster
Arthritic Pain
Relief
or money
back

Picturization
of bottle of
IMDRIN

Mail this convenient
mail order coupon

Coupon

IMDRIN is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis. * * *

For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect. * * *

IMDRIN is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica, and neuritis. To back up its claims, the distributors of IMDRIN stand ready to return your money if you do not get the relief you desire. All druggists have IMDRIN. Ask for it TODAY.

PAR. 4. In the first line of the first above-quoted advertisement, respondents represent the drug preparation "Imdrin" to be an "AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS," which will "Stop Swelling. Uncork Joints." From the quoted statements considered separately, and from the quoted statements considered in the light of the entire advertisement, it may reasonably be inferred that the preparation "Imdrin" is a newly discovered drug or substance effective in the treatment of rheumatic and arthritic conditions. To represent that such preparation "stops swelling" and "uncorks joints" is to represent that it possesses therapeutic properties curative of such conditions. Furthermore, the picturization of the

Findings

49 F. T. C.

anatomical chart, accompanied by the statement, "Where Rheumatism Strikes And How To Detect It," logically warrants the inference that the drug preparation "Imdrin" is offered as a treatment for rheumatic and arthritic conditions.

Although the various advertisements carry such statements as "No faster arthritic pain relief known," "Relief of nagging aches, pains, swelling, and stiffness accompanying arthritic and related illnesses," "One of the fastest arthritic and rheumatic pain relievers known to medical science," and "It is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica and neuritis," such statements, and others similar thereto relating to the relief of the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug preparation "Imdrin" is offered only as an analgesic and antipyretic. The offering of said product as a "scientific remedy" implies that its use may effect cures. As used by respondents in their advertisements, the word "remedy" is not sufficiently qualified by any accompanying statement to modify or limit this significance of "cure."

The representation that "* * * Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement * * * and back it up with proven hospital and clinical records" clearly implies that such statement may truthfully be made with regard to the drug preparation "Imdrin," and, accordingly, that said preparation is an effective medication for rheumatic and arthritic conditions.

It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions;

2. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations;

5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

PAR. 5. The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, 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.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

"Sciatica" is an ailment which is manifested by pain along the course of the sciatic nerve, and is one form of neuritis. It also results from various causes, such as pressure exerted on the nerve or its roots by a tumor or neoplasm or an over-growth of bone; irritation or inflammation of the sheath of the sciatic nerve; and many other causes.

The term "neuralgia" refers to a syndrome of pain, or violent spasms of pain, which occur along the course of various nerves.

"Gout" is a disease connected with a disturbance of the metabolic functions of the body, involving the absorption of uric acid, which may result in pathological changes in joints, bones, cartilages, and a number of internal organs, particularly the kidneys, which may be utterly destroyed thereby. In its early stages, the predominant symptoms of gout are recurring attacks of pain and swelling in the joints. Gout may cause deposits of crystalline material, with surrounding inflammation, in joints, resulting in the destruction of their function.

"Fibrositis" is a general term referring to an inflammation of the fibrous tissues of the body, arising from unknown causes, and manifested by symptoms of aching and stiffness about joints or in various muscle groups. It may result in sciatica.

Findings

49 F. T. C.

The term "bursitis" refers to inflammation of a bursa, which is a sac, generally adjacent to a joint or a bony prominence of the body, containing fluid, the purpose of which is to act as a shock-absorber to provide for free movement of bones and joints. There are many types of bursitis, arising from known as well as unknown causes, such as gouty, tubercular, and gonorrheal bursitis.

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.

The term "osteoarthritis" refers to one of the chronic forms of joint diseases which has the pathological characteristic of a wearing away of cartilages and the production of excess bone at the margins of joints, which manifests itself as a painful stiffness, creaking of joints, and sometimes loss of motion. Osteoarthritis may result from externally-caused injury, or from unknown causes.

The term "infectious arthritis" refers to a form of arthritis caused by invasion of the joint by a germ.

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, particularly 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 for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, 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 any of 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 any arthritis or rheumatic ailment. It is possible, however, to restore to normal certain of such pathological changes which are due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin.

PAR. 8. The thiamine chloride, which is a vitamin, contained in the drug preparation "Imdrin" is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones, for the reason that, when administered orally, as specified in the directions for taking Imdrin, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin." Accordingly, the drug preparation "Imdrin" does not constitute a new discovery of scientific research.

The analgesic effect of these salicylates, in the amount contained in the drug preparation "Imdrin," upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational.

Order

49 F. T. C.

PAR. 9. The drug preparation "Imdrin," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any such conditions. The drug preparation "Imdrin," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Imdrin," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief, the drug preparation "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis. Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking the drug preparation "Imdrin," to resume such habits or occupations.

The drug preparation "Imdrin," however taken, will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

PAR. 10. Respondents' representations concerning the drug preparation "Imdrin," 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 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 the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, in-

dividually 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 "Imdrin," 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 neuritis, sciatica, gout, neuralgia, fibrositis, 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, neuritis, sciatica, gout, neuralgia, fibrositis, or 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 neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other 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 and partial relief of minor aches, pains, or fever;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin," to resume such normal habits or regular occupations;

(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin," which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That respondents, Rhodes Pharmacal Company, Inc., J. Sanford Rose and Jerome H. Rose, 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 contained in said initial decision, a copy of which is attached hereto [as required by aforesaid order and decision of the Commission].

OPINION OF THE COMMISSION

By MEAD, COMMISSIONER: This matter involves the truth or falsity of certain claims contained in respondents' advertisements of their medicinal preparation Imdrin. There is no contest as to the wording of the advertisements or the formula of the preparation. The contest is as to the meaning of the said advertisements, the value of said preparation and the appropriate form of order, if any, required herein.

Respondents contend that their representations mean only that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that it will provide treatment and cure of arthritis and rheumatism. Respondents do not contend that "Imdrin" will cure arthritic or rheumatic conditions in the sense of removing the basic causes of these conditions. They do contend, however, that the use of "Imdrin" as directed will relieve the pains, suffering, inflammation, stiffness and redness of persons affected with arthritis or rheumatism.

Certain of respondents' advertisements for Imdrin contained the following statements:

ARTHRITIS AND RHEUMATISM SUFFERERS

Don't needlessly suffer crippling pains—untold agony and torture experienced by sufferers of arthritis, rheumatism, lumbago, neuralgia and all of the other similar miserable ailments. Now blessed relief may be yours. IMDRIN Tablets—the wonder prescription—acts immediately—decisively—brings marvelous freedom from pain. IMDRIN is more than a so-called "pain-killer" or soothing balm. It's a combination of recognized medically tested ingredients that works internally * * * systematically! Yes. IMDRIN works effectively—safely—through the *blood stream*. Gets down deep—right where the trouble lies. Fights poisons and toxins that cause all the pain, misery and suffering.

You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-M-D-R-I-N, IMDRIN, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. IMDRIN contains a remarkable research discovery! * * * that not only stops pain, helps reduce swelling, but acts to uncork the joints!

Cases deemed almost hopeless * * * persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement * * * and back it up with proven hospital and clinical records.

By their statements in these advertisements that their preparation would do more than relieve pain, that it would reduce swelling and act to uncork the joints, that it would fight the poisons and toxins that cause the pain, that it was a remarkable research discovery comparable to sulpha and penicillin and by other statements of like import, respondents have represented and implied that Imdrin is a newly discovered drug which constitutes an effective treatment for and will cure arthritic and rheumatic conditions in addition to representing that its use will afford relief from the aches and pains caused by such conditions.

In an attempt to prove that their advertisements do not mean to the purchasing public that Imdrin will provide a treatment and cure of arthritis and rheumatism, respondents had a survey conducted. This survey consisted of showing three of respondents' advertisements to 300 members of the public and asking them whether those advertisements meant that Imdrin would provide relief from pain of arthritis or rheumatism or whether they meant that it would provide a treatment and cure of arthritis or rheumatism. Two of the advertisements shown were short and relatively free of any statements implying respondents' preparation would have any effect other than pain relief. The third advertisement prominently featured pain relief in bold faced type. By the form of their questions respondents' survey implied that the advertisements represented one or the other, either Imdrin would provide pain relief or it would provide a cure. As all of respondents' advertisements claim Imdrin will provide pain relief in addition to their other representations, a survey implying that the advertisement either represented a cure or it represented pain relief was improperly designed to determine if they did not represent both. But even under these conditions the results of the survey show that nine percent of those questioned stated that the advertisements represented that Imdrin would provide a treatment and cure for arthritis and rheumatism. This number alone would constitute a sufficient showing of the deceptive nature of respondents' advertisements. Upon this record the Commission is of the opinion that the hearing examiner correctly held that respondents represented Imdrin would provide a treatment and cure for arthritic and rheumatic conditions in addition to their claim that its use would provide relief from the pains accompanying these conditions.

Opinion

49 F. T. C.

The greater weight of the expert medical testimony is that, when taken as directed, the only ingredient in Imdrin which has any significant beneficial effect is the salicylate. This ingredient is present in each tablet in the form of 1.9 grains of acetylsalicylic acid (i. e. aspirin) and 1.5 grains of manganese salicylate. Salicylate in the amounts contained in Imdrin, when taken as directed, has no therapeutic value in the treatment of arthritic or rheumatic conditions and has no beneficial effect upon the symptoms of such conditions other than to afford a temporary and partial relief from the less severe pains and fever caused by such conditions, according to the greater weight of the expert medical testimony.

In an attempt to disprove this medical testimony respondents presented witnesses who testified as to the improvement in their conditions upon taking Imdrin. From their testimony it is clear that improvement occurred. However, due to the uncertainty of the proof as to the cause of their original condition and the proof that the use of Imdrin was the cause of their improvement, this testimony is not sufficient to offset the testimony of outstanding experts in the field of arthritis and rheumatism to the effect that temporary and partial relief of less severe pain and fever are the only effects possible from the use of this preparation, as directed, by persons suffering with arthritic or rheumatic conditions.

Respondents particularly except to the provision in the order contained in the hearing examiner's initial decision prohibiting them from advertising that Imdrin will have any therapeutic effect upon any of the symptoms of any arthritic or rheumatic condition in excess of affording temporary and partial relief of minor aches, pains or fever or that Imdrin is a remarkable, amazing, sensational new discovery of scientific research or that it will enable users to resume their normal habits or regular occupations.

In support of their contention that Imdrin was properly described as a new discovery, respondents point out that it does contain a unique combination of ingredients. However, the greater weight of the expert medical testimony shows that, in the dosage prescribed, the only beneficial ingredient is the salicylate which has been known and used for years by the medical profession for the relief of pain and the reduction of fever. The combining of other ingredients, which have no beneficial effect in the quantities used, with commonly known and used drugs does not make the resultant preparation a remarkable, amazing, sensational new discovery of scientific research. The use of such false and misleading representations was properly prohibited.

In support of their contention that they should not be restricted to representing that Imdrin's only therapeutic effect on the symptoms of

arthritis and rheumatism is temporary and partial relief of minor aches, pains and fever, respondents contend (1) that this prohibition is not supported by the facts of record, (2) that the hearing examiner in another case involving a similar preparation, Dolcin, omitted the word partial from his order thus permitting representations that said preparation would provide complete relief for minor aches, pains and fever, temporarily, and (3) that the courts have held that the use of the word "temporary" in the manner used in this order is improper as it is uncertain in its meaning and unnecessary for the protection of the consuming public.

The greater weight of the expert medical testimony is that the only ingredients in respondents' preparation which have any significant beneficial effect, when taken as directed, are the 1.9 grains of acetylsalicylic acid and the 1.5 grains of manganese salicylate. Taken as directed, six tablets per day, Imdrin provides a daily dosage of 20.4 grains of salicylate containing compounds. Salicylates provide temporary relief from pain, the extent of the relief varying, within limits, according to the amount of the dosage. The expert medical testimony is unanimous that 20.4 grains is not a sufficient daily dosage to relieve the most severe pains resulting from arthritic and rheumatic conditions, and the greater weight of the expert medical testimony, including that of respondents' witness, Dr. Black, is that this constitutes too low a daily dosage for complete relief from pains accompanying an average case.

In the case referred to by respondents involving Dolcin, a similar preparation, while the quantity of salicylate in each tablet was comparable to that present in Imdrin, the dosage recommended for acute symptoms was double the dosage recommended for Imdrin. On the basis of that record the hearing examiner concluded that such a dosage would provide complete but temporary relief from the minor pains accompanying arthritis and rheumatism. The Commission is of the opinion that the daily dosage directed for the use of Imdrin was sufficient to afford only partial relief from minor pains accompanying arthritis and that respondents' advertisements offering complete relief from such pains are unfair and deceptive.

Respondents raise two objections to the use of the word "temporary" in the hearing examiner's order. One, that it is unnecessary, and two, that it is uncertain in its meaning. The Commission is of the opinion that advertising claims should always be so limited where only temporary relief is afforded unless by the very nature of the claim, there is no real danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford relief from pains due to a particular

cause, namely, pains of arthritis and rheumatism. By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved by eliminating the cause of the pain. Advertisements offering relief from arthritic pain and suffering thus imply a lasting relief to a much greater extent than would be implied by claims for relief from underarm perspiration or odor or relief from itching. It is in the same class as those representations which state that the use of a preparation will relieve delayed menstruation or remove dandruff, which unless qualified imply that the symptom will be permanently eliminated by removing its cause.

The decisions of the courts which have considered this question and permitted the use of the word temporary in certain orders while eliminating it in others, in the main, are distinguishable on this basis. In those cases involving a preparation which provides only temporary symptomatic relief where the representations implied that the relief or removal of the symptom would be effected by eliminating its cause, the courts have held that the requirement that such representations be limited to claiming temporary relief or removal of the symptom constituted a proper prohibition. Such a requirement, although indefinite as to the duration of the effectiveness of the preparation, can be satisfied by any representation which shows that lasting relief is not claimed. The Commission, therefore, is of the opinion that the inclusion of the word "temporary" as used in the order contained in the hearing examiner's initial decision is necessary and proper in all respects.

The Commission is of the further opinion that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondents' illegal practices. We, therefore, are of the opinion that respondents' appeal is of no merit and that it should be denied.

Commissioner Carretta did not participate in the decision of this matter for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

Syllabus

IN THE MATTER OF

TILLER-FAITH PIANO COMPANY, INC. ET AL.

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

Docket 5967. Complaint, Mar. 17, 1952—Decision, Oct. 3, 1952

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of pianos; in carrying on their business under a plan whereby in their advertising in rural newspapers, over such names as "Finance Manager", "Collection Department", and "Finance Department", they made such typical statements as "FORCED TO SELL SPINET PIANO LIKE NEW. We are forced by circumstances over which we have no control to sell in this section Gorgeous little spinet piano. Party with good credit can pay minimum down payment and assume few monthly payments. Considerable has already been paid. Write to Manager Collection Department", etc.; and sent to those replying an agent who, after placing on a truck a new piano, to which a price tag, usually in the amount of \$795, had been attached, proceeded to the residence of the inquirer—

- (a) Represented through statements in their said advertisements and orally through their said agents that they were forced to sell the pianos involved, which they had previously sold to a purchaser for the usual price of \$795 and had repossessed due to financial difficulties of the purchaser, etc.; that the pianos were not new and substantial amounts had been paid on their purchase price by others; and that they were being offered at a substantial discount from the usual price in order to save time and expense of transporting them back to the store;

The facts being that they were not in any manner forced to sell said products, which had not been repossessed but were new and had been acquired through ordinary purchase from their suppliers; the \$795 or such other sums as were shown on the price tags or stated by their agents to be usual prices were fictitious; and the prices actually charged under their aforesaid plan were those at which the pianos were usually and regularly sold;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that such statements and claims were true, and with the result that a substantial number purchased said pianos, and trade in commerce was thereby unfairly diverted to them from their competitors, to the injury of the latter and the 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 and deceptive acts and practices in commerce, and unfair methods of competition therein.

Before *Mr. John Lewis*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Warren, Merrell & Combs, of Evansville, Ind., for respondents.