

IN THE MATTER OF
THE d-CON COMPANY, INC., ET AL.

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5958. Complaint, Feb. 28, 1952—Decision, July 17, 1953

Where a corporation and its officers, engaged in the manufacture, sale and distribution under the name "d-Con" of three rodenticide preparations, including a concentrate for mixing with bait, and "d-Con Ready Mixed" and "d-Con's Mouse Prufe"; in advertisements in periodicals and radio continuities—

- (1) Represented that "d-Con" was non-poisonous and completely safe and might be used without danger to human beings and domestic and farm animals; when in fact, while said products were not violent poisons and repeated doses for a period of days in large amounts would be required to endanger animals or humans, nevertheless, handled carelessly or by those who did not realize their poisonous nature, they constituted a serious danger to certain animals and humans;
- (2) Represented that "d-Con" was "the ONLY rat and mouse killer in the world that contains . . . special ingredient that the UNITED STATES TESTING LABORATORIES has PROVED to be three times more effective"; when in fact, composed of Warfarin mixed in a bait of freshly ground corn, it was no more attractive to rats than other freshly ground corn and not significantly more attractive than certain other rodenticides;
- (3) Represented that there were "NO TELL-TALE AFTER ODORS with d-CON"; facts being that it would not eliminate all after-odors caused by putrefaction of the carcasses of dead rats;
- (4) Represented that "d-Con's Mouse-Prufe" was the "only mouse eliminator that contained Warfarin"; when in fact there were other Warfarin-containing products designed for mouse control on the market when such statement was made on radio commercials; and
- (5) Represented that "d-Con" was "the new scientific discovery reported in READER'S DIGEST": when in fact the Reader's Digest article contained no reference to d-Con itself but was about Warfarin, principal ingredient in competing products as well as in d-Con;

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

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Horace A. Young, of Chicago, Ill., for United Enterprises, Inc.

Frank E. & Arthur Gettleman, of Chicago, Ill., for all other respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 28, 1952, issued and sub-

sequently served its complaint in this proceeding upon the respondents The d-Con Company, Inc., and United Enterprises, Inc., corporations, and Leonard L. Ratner, Jerome S. Garland and Gerald H. Rissman, individually and as officers of said corporations, charging them and each of them with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the provisions of said Act. Respondents filed their answers to said complaint, and hearings were thereafter held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly filed and recorded in the office of the Commission. Proposed findings as to the facts and conclusions were filed by counsel for respondents and counsel supporting the complaint. Thereafter on January 19, 1953, the hearing examiner filed his initial decision which was duly served on the parties.

Within the time permitted by the Commission's Rules of Practice, both counsel for respondents and counsel supporting the complaint filed an appeal from said initial decision. Thereafter, this proceeding regularly came on for hearing by the Commission upon the record herein, including briefs in support of and in opposition to both appeals and oral argument of counsel, and the Commission issued its order denying the appeal of counsel supporting the complaint and granting in part and denying in part respondents' appeal; and the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The d-Con Company, Inc., and United Enterprises, Inc., are corporations, organized under the laws of the State of Illinois with their principal offices located at 112 East Walton Street, Chicago, Illinois. Respondent United Enterprises, Inc., is in process of liquidation, having disposed of all its assets prior to February 15, 1952, except a few bills receivable, and since said date has neither manufactured, advertised nor sold any merchandise. Respondent The d-Con Company, Inc., has been for some time past, and is now, actively engaged in business as hereinafter described.

Respondents Leonard L. Ratner, Jerome S. Garland and Gerald H. Rissman are President, Vice-President, and Treasurer, respectively, of The d-Con Company, Inc., their offices being that of The d-Con Company, Inc., and as such officers they formulate and execute the

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policies and practices of that corporation. Respondent Leonard L. Ratner was for a time, but is not now, President of United Enterprises, Inc.

PAR. 2. Respondents The d-Con Company, Inc., Leonard L. Ratner, Jerome S. Garland and Gerald H. Rissman, are now, and for over two years last past have been, and respondent, United Enterprises, Inc., prior to February 15, 1952, has been, engaged in the manufacture, sale and distribution of three rodenticide preparations, namely d-Con, d-Con Ready Mixed and d-Con's Mouse-Prufe. d-Con Ready Mixed and d-Con's Mouse-Prufe contain a cereal bait and are ready for immediate use. d-Con is a concentrate which is to be mixed with bait before use. The formulae and directions for use thereof are as follows:

Designation: d-CON

Formula: ACTIVE INGREDIENTS:

WARFARIN (3-(α -acetonylbenzyl)

4-hydroxy coumarin)----- .3%

INERT INGREDIENTS----- 99.7%

Directions: Mix thoroughly contents of this package with 5½ lbs. of suitable semi-permanent bait material such as fresh corn meal, rolled oats, nut crumbs, dog food meal, poultry mash, etc. Place 2 oz. to 1 pound of mixed bait in locations frequented by rats and mice, and protect from children, dogs, cats and livestock by means of bait boxes or cages where necessary. Baits should be replaced as consumed. Use no decomposed, moldy or sour baits. Cereal baits are more generally used. Establishment and proper servicing of permanent protected feeding stations in areas where there is danger of reinfestation by rats and mice will not only control the rodents present but will be available to destroy other rats and mice as they invade the premises. For *best results* maintain supplies of *fresh* bait at such stations at all times.

NOTICE: Baiting should continue until complete lack of feeding is noted. This should take place in from five to fourteen days.

CAUTION: d-CON contains as its active ingredient an anticoagulant chemical, which, if taken accidentally by humans, domestic animals and pets may reduce the clotting ability of the blood and a serious hemorrhage may result. In case baits are accidentally eaten—

ANTIDOTE: give tablespoonful of salt in glass of warm water and repeat until vomit fluid is clear. Call physician immediately.

Notice to Physicians: When a human has been known to have accidentally ingested d-CON, blood transfusions combined with intravenous injections and oral doses of Vitamin K are indicated as in the case of hemorrhage caused by overdoses of dicumarol.

Designation: d-CON READY MIXED

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Formula : ACTIVE INGREDIENT :

WARFARIN (3-(a-acetonylbenzyl)	
4-hydroxy coumarin)-----	0.025%
INERT INGREDIENTS-----	99.975%

Directions: Substantially the same as those set out above for d-CON except as to the mixing.

Designation: d-CON's MOUSE-PRUFE

Formula : ACTIVE INGREDIENTS :

WARFARIN (3-(d-acetonylbenzyl)	
4-hydroxy coumarin)-----	.025%
INERT INGREDIENTS-----	99.975%

Directions: Substantially the same as those set out above for d-CON except as to the mixing.

Warfarin is an anticoagulant compound developed in 1948 by Dr. Karl Paul Link and his associates in the laboratories of the University of Wisconsin. Patent to this compound is held by the Wisconsin Alumni Research Foundation which licenses respondents, among others, to manufacture and sell said compound. The use of Warfarin represents a completely new practical approach to rodent control. Products containing this compound differ from all previously used successful rodenticides in two respects. It kills effectively only when consumed repeatedly, and it produces no acquired bait shyness in the rodents being poisoned. It causes death by producing internal bleeding.

PAR. 3. The respondents, with the exception of respondent United Enterprises, Inc., since February 15, 1952, have caused and now cause their said products, when sold, to be transported from their places of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and have maintained and now maintain a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Their volume of trade has been, and, with the exception of respondent United Enterprises, Inc., is now, substantial.

PAR. 4. In the course and conduct of their said business all of the respondents, with the exception of respondent United Enterprises, Inc., are now, and respondent United Enterprises, Inc., prior to February 15, 1952, was, engaged in substantial competition in commerce with other corporations, firms, and individuals in the sale of rodenticide products.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the purchase of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, respond-

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ents have disseminated and caused the dissemination of certain advertisements in periodicals and radio continuities containing the statements set out hereafter and lettered (a) through (h), respectively. For clarity of discussion each advertising claim alleged to be false and the facts of record relating thereto are discussed separately as follows:

(a) *Respondents' Statements:*

D-CON is safe, clean, easy to use

D-CON, made with WARFARIN can now eliminate all rats and mice from your property, completely and permanently without endangering the life of your family or animals. In a recent test made on a University Experimental Farm, a chicken was fed enough WARFARIN to kill 9,000 rats. After 14 months of daily feeding, the chicken was still alive and doctors examinations indicated that not one bit of damage was done to the chicken, either internally or externally—or to the eggs. Certainly this test proves the harmlessness of D-CON to farm animals.

Alleged False Meaning:

That d-CON is non-poisonous and completely safe and may be used without danger to human beings and domestic and farm animals.

Facts Relating Thereto:

Respondents' advertisements of their said products taken in their entirety show that they are intended to control rats by poisoning them. They clearly reveal the poisonous nature of these products. Therefore, the allegation that respondents' claim their product is non-poisonous is not sustained by the record.

However, the above-quoted advertising claims imply that, although poisonous, d-Con is not sufficiently poisonous to human beings and animals to endanger their lives. In fact, if humans or certain domestic animals ate a quantity of respondents' products for a period of several days, the clotting ability of their blood might be reduced to such an extent that serious internal bleeding would result.

The package in which d-Con is sold contains the following legend:

CAUTION: d-CON contains as its active ingredient an anti-coagulant chemical, which, if taken accidentally by humans, domestic animals and pets may reduce the clotting ability of the blood and a serious hemorrhage may result.

Respondents' said products are not violent poisons. Repeated doses for a period of days in relatively large amounts would be required to endanger animals or humans. Adequate instructions for handling these products with safety are set out on the packages in which they are sold. These products, if handled in accordance with directions by persons realizing they are handling a poison, would not constitute any serious danger. However, handled carelessly or by persons not realizing they are poisonous, these products would constitute a serious

langer to certain animals and humans. To this extent the allegations of the complaint as to these advertising claims are sustained by the evidence.

(b) Respondents' Statements:

Yes, the new WARFARIN formula, developed by the U of Wisconsin, and now being sold commercially as D-CON, is the only RAT and MOUSE killer ever discovered that will rid your property of all rodents within 15 days, and will keep it FREE of these destructive pests . . . FOREVER! * * * if you use D-CON as directed, you'll never have another RAT or MOUSE ON YOUR PROPERTY . . . FOREVER! * * * Then, use D-CON as directed.

If, at the end of 15 days you have a SINGLE RAT or MOUSE on your property, return the empty can for a full \$2.98 refund.

Alleged False Meaning:

That d-CON will destroy all rats and mice on a property within 15 days and will thereafter keep such property free from rats and mice.

Facts Relating Thereto:

By the use of these statements in their advertising, respondents have represented that if you use d-Con as directed, it will rid your property of all rodents within 15 days, and will keep it free from these destructive pests forever. The record shows that rats eating 1 to 1½ mg. of the preparation over a period of five days will usually die by the seventh day. Expert testimony in the record shows that there are situations, such as where more attractive other food is readily available, where the time required to kill the rats may extend beyond 15 days and the extent of the elimination may not reach 100 percent. However, evidence in the record, including evidence of actual tests with d-Con on badly infested areas, indicates that such situations are relatively rare. The greater weight of the evidence of record will not support a finding that respondents' preparation, used as directed, will fail to rid a property of all rodents within 15 days in any substantial number of cases; nor will it support a finding that its continued use as directed will fail to keep the property free of rodents in any substantial number of cases. Respondents have attempted to provide for those cases, which the record indicates are relatively rare, where the use of their product as directed will not result in 100 percent extermination in 15 days, by offering to refund the purchase price.

Taking into consideration all of the circumstances as shown by this record, the Commission is of the opinion that the public interest does not require any corrective action as to these representations, and that the allegations as to them have not been sustained.

(c) Respondents' Statement:

* * * D-CON the ONLY rat and mouse killer in the world that contains both warfarin, the University of Wisconsin's NEW, ACCLAIMED discovery, and

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LUREX—a special ingredient that the UNITED STATES TESTING LABORATORIES has PROVED to be three times more effective.

Alleged False Meaning:

That d-CON contains a special attractant that is three times more successful or luring than any other rodenticide bait or regular feed.

Facts Relating Thereto:

Respondents' said advertising claim has the meaning alleged. d-Con is a rodenticide composed of Warfarin mixed in a bait of freshly ground corn. The evidence establishes that it is no more attractive to rats than other freshly ground corn and that it is not significantly more attractive than certain other rodenticides. The allegation that his advertising claim is false and deceptive is sustained by the evidence.

(d) Respondents' Statement:

NO TELL-TALE AFTER-ODORS with d-CON

Alleged False Meaning:

That d-CON will eliminate all after-odors usually associated with the use of rodenticides.

Facts Relating Thereto:

Respondents' said advertising claim has the meaning alleged. In fact, however, d-Con will not eliminate odors caused by putrefaction of the carcasses of dead rats, which is the after odor associated by the public with the use of a rodenticide. This representation, therefore, is false and deceptive as alleged.

(e) Respondents' Statement:

That's why the D-CON formula is recommended by the U. S. Public Health Service and the U. S. Fish and Wildlife Service * * *.

Alleged False Meaning:

That d-CON has been recommended by the United States Public Health Service and the United States Fish and Wildlife Service.

Facts Relating Thereto:

The said statement does not have the meaning alleged. It clearly states that the d-Con formula had been so recommended—not d-Con. The record shows that this statement is true. Both the United States Public Health Service and the United States Department of Interior, Fish and Wildlife Service, in published bulletins, have recommended the use of Warfarin with a cereal type bait for rodent control. A bulletin of the latter agency recommends the use of a 0.025% concentration of Warfarin with a cereal type bait. This is the exact formula and concentration of ready mixed d-Con and d-Con's Mouse-Prufe. This allegation, therefore, is not sustained by the evidence.

(f) Respondents' Statement:

Middleton, Wisconsin, for years was very badly infested with rats and mice. Many women and children were afraid to go out because of this great infestation. In order to prove the effectiveness of d-CON, the Middleton civic organizations, in cooperation with and at the expense of d-CON Company, set out bait stations on November 4th throughout the entire township. By November 19th, there were no longer any signs of rats in the entire city! NO ONE HAS SEEN A SINGLE SIGN OF A RAT OR MOUSE SINCE—Thanks to d-CON Middleton is rat FREE!

Alleged False Meaning:

That all rats and mice infesting a town will be eliminated by the use of d-CON and that such town will remain free from reinfestation by rats and mice.

Facts Relating Thereto:

This statement does not represent that all towns can be made permanently rat and mouse free through the use of d-Con. This advertisement used as part of a radio continuity from January 2nd through 5th, 1951, stated that after using d-Con in a campaign against rats and mice in Middleton, Wisconsin, which campaign closed November 19, 1950, the town was still free of rats and mice. The only evidence tending to disprove this claim was a showing that one year after the campaign closed one live mouse and some rat burrows were found in an inspection of the town. Such evidence does not prove this claim to be false, especially as there was no showing of continued use of d-Con throughout the town after the close of the campaign. Respondents' actual claims for permanent control of rats and mice apply only to restricted areas where d-Con's use is continued as directed. Therefore, the allegation as to the falsity of said advertising claim has not been sustained by the evidence.

(g) Respondents' Statement:

Yes, d-CON's Mouse-Prufe is the only mouse eliminator that contains Warfarin * * *.

Alleged False Meaning:

That d-CON's Mouse-Prufe is the only rodenticide on the market for killing mice that contains the ingredient Warfarin.

Facts Relating Thereto:

Respondents' statement has the meaning alleged. Said statement was made by respondents in radio commercials during the period from June 12th through 19th, 1951. The record shows that there were other Warfarin containing products designed for mouse control on the market at that time. Therefore, this advertising claim was false and deceptive.

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(h) Respondents' Statement:

WIN THE WAR ON RATS AND MICE with d-CON, The new scientific discovery reported in READER'S DIGEST.

Alleged False Meaning:

That d-CON was the subject of a report or article appearing in the publication "Reader's Digest."

Facts Relating Thereto:

Respondents' statement clearly implied that d-Con was the subject of an article in the Reader's Digest. In fact, the article was about Warfarin, the principal ingredient in competing products as well as in respondents' d-Con. The article contained no reference to d-Con itself. Therefore, the advertising claim was false and deceptive.

PAR. 6. The use by respondents of the false, misleading and deceptive statements set out in subparagraphs (a), (c), (d), (g), and (h) of Paragraph 5 of these findings has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true, and has the tendency and capacity to cause such portion of the public to purchase substantial quantities of rodenticides from respondents rather than from their competitors because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of respondents, referred to in the above and foregoing Findings as to the Facts, subparagraphs (a), (c), (d), (g), and (h) of Paragraph 5 were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

The acts and practices set forth in the foregoing Findings as to the Facts, subparagraphs (b), (e), and (f) of Paragraph 5 were not in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That The de-Con Company, Inc., a corporation, and its officers, and Leonard L. Ratner, Jerome S. Garland and Gerald H. Rissman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the rodenticide preparations designated

“d-CON” and “d-CON’s MOUSE-PRUFE,” in whatsoever form sold, or any other rodenticide and substantially similar composition or possessing substantially similar properties, whether sold under either of said names or under any other name or names, do forthwith cease and desist from representing directly or by implication :

1. That any of said preparations are safe or may be used without danger to human beings or domestic or farm animals, unless qualified by the words “when used as directed” or other words of like meaning.

2. That any of said preparations contain a special attractant that is more successful or alluring than all other rodenticide baits or regular feed.

3. That any of said preparations will eliminate all after-odors usually associated with the use of rodenticides.

4. That any of said preparations is the only rodenticide on the market for killing mice that contains the active ingredient Warfarin.

5. That the preparation d-Con was the subject of a report or article appearing in the publication “Reader’s Digest.”

It is further ordered, That the allegations of the complaint relating to the representations set forth in subparagraphs (b), (e), and (f) of Paragraph 5 of the Findings as to the Facts be, and the same hereby are, dismissed as not having been sustained by the evidence.

It is further ordered, That the case growing out of the complaint herein be, and it hereby is, closed as to the respondent United Enterprises, Inc., a corporation, without prejudice to the right of the Commission to reopen the same and to proceed further against said corporation in the event its dissolution should not become final.

It is further ordered, That respondents The d-Con Company, Inc., Leonard L. Ratner, Jerome S. Garland, and Gerald H. Rissman 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.

IN THE MATTER OF
AMERICAN EXTENSION SCHOOL ET AL.

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6055. Complaint, Nov. 3, 1952—Decision, July 17, 1953

Where a corporation and its president, engaged in the interstate sale and distribution through the U. S. mails of a study course to prepare students thereof for examination for U. S. civil service positions; in advertisements in newspapers in the northwestern part of the United States and advertising matter distributed to prospective students—

- (1) Used the word "University" in their trade or corporate name and the word "Extension" to describe their course and thereby represented that their school was a resident institution of higher learning or an extension division of such institution, when in fact they did not maintain a resident school and had no resident faculty but operated a commercial business for profit;
- (2) Represented falsely as aforesaid and through use of emblems depicting the American eagle and simulation of the U. S. official seal on advertising, stationery, and lesson material, that their school was connected with the U. S. Civil Service Commission or other Government agency, and that their sales agents were employees thereof; that they had contractual relationships with the U. S. Government for supplying applicants for civil service positions; that the U. S. Civil Service Commission recognized and recommended their school; and that they had advance information of U. S. civil service examinations;
- (3) Represented falsely as aforesaid and through their sales representatives that completion of their courses of study or passing of their aptitude or other tests assured employment in the U. S. civil service; that it was necessary for persons seeking such positions to take their courses of study in order to qualify; that all persons completing their course and passing U. S. civil service examinations would be placed at the top of the list of eligibles; that civil service positions were generally available which, in fact, required veterans' status or special qualifications, and that vacancies existed contrary to fact; that starting salaries for such positions were greater than was the fact; and that the examinations they gave were for specific civil service positions; and
- (4) Represented falsely that unless prospective students enrolled immediately at the time their salesman called, their opportunity to take the course would have passed for a year because the enrollment quota was limited and students could not be accepted for future enrollments:

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

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

Mr. William L. Pencke for the Commission.

Mr. John M. Brady, of Portland, Oreg., for respondents.