

IN THE MATTER OF
GARDEN RESEARCH LABORATORIES ET AL.

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

Docket 6093. Complaint, Apr. 17, 1953—Decision, Nov. 13, 1953

Where a corporation and its president, engaged in the competitive interstate sale and distribution of a chemical fertilizer, designated "RX-15", designed for use as a liquid fertilizer by the addition of water; its advertising agency; and the secretary-treasurer of the corporate manufacturer of its said "RX-15" and the owner or controller of 50% of its stock; through advertisements in newspapers of national circulation and radio broadcasts—

- (a) Falsely represented that "RX-15" was the scientific designation of a plant food and that the product was the result of atomic research and a new discovery or new product; and
- (b) Represented that scientists at a Michigan college and at Rutgers University discovered said product in their laboratory and conducted tests and published records with respect thereto and that scientists at said University made photographs showing the results of said tests;

The facts being that liquid fertilizers have been known and experimented with for years; said product was not discovered by scientists at any educational institution; and while such fertilizers have recently been made in sufficiently large quantities as to be available to the retail trade, and persons identified with colleges, universities, and agricultural experimental stations have conducted tests and made reports on the effectiveness thereof and photographs were made in connection with tests conducted at Rutgers, the liquid fertilizer used therefor was not said product;

- (c) Represented that photographs used by them in their advertising were taken by the U. S. Atomic Energy Commission, were reproduced by them in their advertisements with the special permission of said Commission, and that a photograph designated as "Atomic Photograph" and "Test No. 1" was taken 15 minutes after plant food was applied to the roots of the plant;

When in fact the photographs used were not taken by said commission; they did not authorize them to use any photographs in their advertisement; and the photograph last referred to above was taken one hour after plant food was applied to the roots and not, as claimed, after 15 minutes;

- (d) Falsely represented that their product contained radioactive materials; the facts being that while radioactive isotopes were used in the tests referred to, to trace the pattern of a plant nutrient so as to determine the rate of accumulation of liquid fertilizer, they are not intended to benefit plants in any way; while isotopes used as tracers by scientists at Rutgers were made available to them by said commission, it was in no way connected with the tests; and photographs made in connection therewith were taken to show through radioactivity results obtained with liquid fertilizer;
- (e) Represented that through the use of said product anyone could produce an abundance of flowers and vegetables on a small patch of ground with little or no work, merely by sprinkling plants with water containing said product,

and that the ingredients acted immediately upon application to the leaves and when applied to the roots reached the leaves of plants in 15 minutes; The facts being that while liquid fertilizers of the type concerned are effective, used according to directions, many other factors must be present to insure successful harvest; sprinkling leaves alone with liquid fertilizers is not an effective method of general fertilizing; while some of the ingredients of said product begin to be absorbed by the leaves of many plants at the time of application by sprinkling and when applied to the roots begin to be absorbed at once, the time of absorption varies among plants; and in any event it has not been established that all of the ingredients are absorbed by the leaves of all plants in 15 minutes or any specified time;

(f) Represented that dry fertilizers do not produce results for months after application and that said "RX-15" was more powerful than all other fertilizers and supplied 360% more plant food, was 1,000 times faster than dry fertilizers, and was substantially cheaper than other fertilizers;

The facts being that while some dry fertilizers are more readily absorbed than other such fertilizers, dry fertilizers, nevertheless, begin to be absorbed on contact with or application of moisture and produce results within a short time thereafter and not after months; and product is not more effective than a number of other fertilizers, and, while in concentrated form, is not more powerful than a number of others under conditions of use, namely, after dilution with water as directed; there is no scientific basis or statistical proof that it supplied more plant food faster than other fertilizers as above set forth, or as to any comparison with other fertilizers with respect to the amount of food supplied or the time within which it becomes effective; and its cost is not substantially cheaper than many other fertilizers based upon effectiveness as such products;

(g) Represented that the vitamins and hormones contained in said product aided in plant growth, and that one product was so highly concentrated that one pound made nearly $\frac{1}{4}$ of a ton of liquid plant food at a price of less than $\frac{1}{2}\text{¢}$ per pound;

The facts being that it contained no vitamins or hormones; said substances are not known to be of any significant aid in fertilizing plants; and its claim as to cost per pound of $\frac{1}{2}\text{¢}$ was based upon the weight after dilution with water, which is not itself a plant food; amount of such food available was actually only the amount of the product before dilution; and cost thereof per pound was cost of the product itself per pound; and

(h) Represented that other fertilizers would likely ruin plants while its product would not burn the tenderest plant or the roots thereof;

The facts being that while fertilizers, including its said product, used correctly will not injure plants, many dry and liquid fertilizers, including said RX-15, have the capacity so to do if used in excess of the varying toleration of different plants:

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. William L. Pencke for the Commission.

Mr. James R. Withrow, Jr., Mr. Thomas J. McFadden and Donovan, Leisure, Newton & Irving, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated November 13, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1953, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. No answer to said complaint was filed by said respondents, the time for filing said answer having been extended by the undersigned hearing examiner until the date of hearing, based on the representation that the parties were endeavoring to negotiate a stipulation covering the the facts in this proceeding. At a hearing held before the undersigned hearing examiner, theretofore duly designated by the Commission, a stipulation as to the facts was entered into by counsel supporting the complaint and counsel for respondents, in lieu of oral testimony in support of or in opposition to the allegations of the complaint, and certain documentary evidence was introduced into evidence by agreement of counsel, said stipulation and documentary evidence being only recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint and the aforesaid stipulation as to the facts and documentary evidence, counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner, and 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 AS TO THE FACTS

PARAGRAPH 1. Respondent Garden Research Laboratories is a corporation, organized and existing under the laws of the State of New Jersey. The post office address of said respondent is Madison, New Jersey. Respondent Cecil C. Hoge is president of said corporate

respondent and formulates the policies and directs and controls the practices and activities of said corporation.

Respondents Cecil C. Hoge, Hamilton Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, prior to October 1, 1952, were co-partners trading and doing business as an advertising agency under the firm name and style of Huber Hoge and Sons. The office and principal place of business of said corporate and individual respondents is located at 699 Madison Avenue, New York, New York. This partnership was the advertising agency for respondent, Garden Research Laboratories, and prepared and caused the dissemination of advertising matter for respondent Garden Research Laboratories, including the advertising hereinafter referred to. On or about October 1, 1952, the business carried on by Huber Hoge and Sons was incorporated under the laws of the State of New York under the name of Huber Hoge & Sons, Inc.

Doggett-Pfeil Co. is a New Jersey corporation engaged in the manufacture and sale of chemical fertilizers, including the product sold by Garden Research Laboratories. The Secretary-Treasurer of said corporation is respondent Alfred S. Pfeil who owns or controls fifty percent of the stock of respondent, Garden Research Laboratories. Said respondent participates and collaborates with the copartners trading as Huber Hoge and Sons in the preparation of advertising copy and material for respondent Garden Research Laboratories. His office and principal place of business is located at Springfield, New Jersey.

PAR. 2. For more than one year last past, respondent Garden Research Laboratories has been and is now engaged in the sale and distribution of a chemical fertilizer, designated RX-15, which contains 15% Nitrogen, 30% Phosphoric Acid, 15% Potash and is designed to be used as a liquid fertilizer by the addition of water. RX-15 is manufactured and packaged for said respondents by Doggett-Pfeil Co.

Orders for said product are directed to respondent Garden Research Laboratories at its mailing address in Madison, New Jersey, and are there received by Doggett-Pfeil Co. Said Doggett-Pfeil Co. fills said orders by shipping said product from its place of business at Millburn or Summit, New Jersey, to purchasers thereof located in various other States of the United States. Said respondent maintains, and at all times mentioned herein has maintained a course of trade in commerce in said product and such course of trade has been and is substantial.

PAR. 3. In the course and conduct of their said businesses and for the purpose of inducing the purchase of the product RX-15, respond-

Findings

50 F. T. C.

ents have made many statements and representations concerning said product by means of advertisements inserted in newspapers having a national circulation and by radio broadcasts. Typical, but not all inclusive of such representations made in 1952, are the following:

* * * Today, any child can grow hundreds of beautiful flowers by merely sprinkling them with water, thanks to a new garden discovery at leading Michigan and New Jersey college testing laboratories.

That's right Bart—and all because of new discoveries in food, care, nutrition and the association of atomic radiation with plant life. Food? Nutrition? Atomic radiation? I always thought good old fertilizers were the best known helpers for flowers.

That was last year, Bart. We are now entering a new age * * * an age where gardening will become nothing more than throwing a few seeds into the ground * * * using some special plant foods * * * and cutting the full-grown flowers just several days later * * * Why, do you know that the ordinary fertilizers you may have been using on your garden can very easily ruin your plants instead of helping them.

Atomic Photograph No. 1

Taken exactly fifteen minutes after plant food was applied to roots by Rutgers University scientists at New Brunswick, New Jersey.

Atomic Research Reveals How to Make Flowers, Trees, Shrubs, Bloom Like Magic in Any Soil * * *

* * * you will see, on this page, a "radioactive" photograph made possible by special permission of the United States Atomic Energy Commission

This photograph will prove to you that with just one simple secret—YOU who may know next-to-nothing about gardening, can turn your garden into the show-place of the community with thousands of colorful flaming blossoms—not five years from now—not next year—but this summer * * * actually pick hundreds of pounds of luscious tomatoes, lettuce, cucumbers from a vegetable patch no bigger than a one-car garage. And that YOU—with just ten minutes work—can amaze the "experts" in your neighborhood with a rich thick carpet of lawn—and at a cost so low, it's almost too ridiculous to mention! And you won't even have to dirty your hands!

* * * read about the amazing 15 minute miracle that can make all kinds of flowers bloom for you by the thousands in tiny space, in any soil, even in ordinary sand!

Plant scientists * * * discovered that when this super-powerful plant food of a type called RX-15 is dissolved in water and sprinkled on leaves of plants, the leaves absorb it instantly!

HERE'S PROOF! RUTGERS UNIVERSITY ATOMIC TEST NO. 1

* * * concentrated plant foods that could be dissolved in plain ordinary sink water and when sprinkled on lawns or plants could go to work in minutes!

* * * Rutgers scientists added traces of radio-active atoms to this liquid plant food. This radio-active plant food was then fed to the roots of ordinary plants * * * Exactly fifteen minutes later the leaves were cut off and pressed against radio-sensitive film. Now look at the picture at the right!

(Picture of a skeleton of a leaf)

* * * There's no other work to it.

Compare with all other fertilizers: As an expert, you know that plants do well if they absorb only 25% of the nitrogen, phosphorous and potash slowly released by dry fertilizers over a period of months * * * RX-15 THEREFORE SUPPLIES 360% MORE PLANT FOOD—SUPPLIES IT UP TO 1,000 TIMES FASTER—PRODUCES SPECTACULAR GROWTH RESULTS IN 7 DAYS OR LESS—INSTEAD OF HAVING TO WAIT MONTHS!

RX-15 is at least 3 times more powerful than general types of fertilizer available up to now * * * RX-15 gives you a scientifically balanced 15-30-15 formula that's 3 times more powerful, yet completely safe for use. And to make flowers hold their bloom longer, promote resistance to disease, winter-kill etc. RX-15 also provides a balanced diet of oft-neglected manganese, copper, boron, zinc, vitamins and hormones plus essential trace elements and minerals.

Unlike most fertilizers, RX-15 contains no filler—is so highly concentrated, even the smallest can of RX-15 makes nearly $\frac{1}{4}$ ton of super-powerful plant food at a cost of less than $\frac{1}{2}\phi$ a pound.

RX-15 will not burn, eat or damage even tenderest plants, roots, shoots * * *

PAR. 4. Through the use of the statements hereinabove set forth and others similar thereto but not specifically set out herein, respondents have represented, directly and by implication:

- (a) That RX-15 is the scientific designation of a plant food;
- (b) That said product is the result of atomic research and is a new discovery or new product;
- (c) That scientists at a college in Michigan and at Rutgers University discovered said product in their laboratories, conducted tests with said product and published records with respect thereto, and that scientists at Rutgers University made photographs showing the results of said tests;
- (d) That the photographs used by respondents in their advertising were taken by the United States Atomic Energy Commission and were reproduced by respondents in their advertisements with the special permission of the Atomic Energy Commission;
- (e) That the photograph designated as Atomic Photograph and Test No. 1 was taken 15 minutes after plant food was applied to the roots of the plant;
- (f) That respondents' product contains radio-active materials;
- (g) That by using said product anyone can produce an abundance of flowers and vegetables on a small patch of ground with little or no work, merely by sprinkling plants with water containing RX-15;
- (h) That the ingredients act immediately upon application to the leaves and, when applied to the roots, reach the leaves of a plant in 15 minutes;
- (i) That dry fertilizers do not produce results for months after application;

Findings

50 F. T. C.

- (j) That RX-15 is more powerful than all other fertilizers and supplies 360% more plant food, 1,000 times faster than dry fertilizers;
- (k) That it is substantially cheaper than other fertilizers;
- (l) That the vitamins and hormones contained in said product aid in plant growth;
- (m) That said product is so highly concentrated that one pound makes nearly one-fourth of a ton of liquid plant food at a price of less than one-half cent per pound; and
- (n) That other fertilizers will likely ruin plants, while respondents' product will not burn the tenderest plants or the roots thereof.

PAR. 5. The foregoing representations are false, misleading and deceptive for the following reasons:

(a) There is no plant food known by the scientific designation of RX-15, said designation being merely a trade name adopted by respondents Garden Research Laboratories.

(b) RX-15 did not result from atomic research and is not a new discovery or product.

(c) RX-15 was not discovered by scientists at a college in Michigan, or at Rutgers University, or at any other educational institution. Liquid fertilizers have been known and have been experimented with for years. However, recently they have been manufactured in sufficiently large quantities as to make them available to the retail trade, and persons identified with colleges, universities, and agricultural experimental stations have conducted tests and made reports on the effectiveness of liquid fertilizers similar to RX-15. While photographs were made in connection with tests conducted at Rutgers University, the liquid fertilizer used for the photographs was not RX-15.

(d) The photographs used in respondents' advertising were not taken by the United States Atomic Energy Commission; nor did said Commission authorize respondents to use any photographs in their advertisements.

(e) The photograph designated as "Atomic Photograph No. 1" was taken one hour after plant food was applied to the plant roots and not 15 minutes later, as claimed by respondents.

(f) RX-15 does not contain any radioactive material. While radioactive isotopes were used in the tests above referred to, to trace the pattern of a plant nutrient so as to determine the rate of accumulation of liquid fertilizers, they are not intended to benefit plants in any way. The radioactive isotopes, which were used as tracers by scientists at Rutgers University, were made available to them by the United States Atomic Energy Commission but said Commission was in no way connected with the tests. The photographs made in con-

nection with the tests were taken to show, by means of the radioactivity, the results obtained with liquid fertilizers.

(g) While liquid fertilizers of the RX-15 type are effective fertilizers, when used according to directions, there are many other factors which must be present to insure successful harvest. Sprinkling on the leaves alone with liquid fertilizers is not an effective method of general fertilizing.

(h) While some of the ingredients of RX-15 begin to be absorbed by the leaves of many plants at the time of application by sprinkling and, when applied to the roots, begin to be absorbed at once, such time of absorption varies among plants. In any event, however, it has not been established that all of the ingredients are absorbed by the leaves of all plants in 15 minutes or any specified time.

(i) Among dry fertilizers there are some which are more readily absorbed than others. Nevertheless, dry fertilizers begin to be absorbed on contact with or application of moisture and produce results within a short time thereafter and not after months.

(j) RX-15 is not more effective than a number of other fertilizers. Although it is in concentrated form, RX-15 is not more powerful than a number of other fertilizers under conditions of use, namely, after dilution with water as directed. There is no scientific basis or statistical proof that RX-15 supplies 360% more plant food up to 1,000 times faster than other fertilizers or as to any comparisons with other fertilizers with respect to the amount of food supplied or the time within which it becomes effective.

(k) The cost of RX-15 is not substantially cheaper than many other fertilizers based upon effectiveness as fertilizers.

(l) Vitamins and hormones are not contained in RX-15 and are not known to be of any significant aid in fertilizing plants.

(m) The claim that nearly one-fourth ton of liquid plant food is made available at less than one-half cent a pound is based upon the weight after dilution with water. However, water is not a plant food so that the amount of plant food available would actually be only the amount of the product before dilution. Consequently, the cost of the available plant food per pound would actually be the cost of the product itself, per pound.

(n) When used correctly, fertilizers, including RX-15, will not injure plants. However, many dry and liquid fertilizers, including RX-15, have the capacity to injure plants if used in excess of a plant's toleration, such toleration varying with different plants.

PAR. 6. Respondents, Garden Research Laboratories and Cecil C. Hoge, in the conduct of said business, have been and are in substantial competition in commerce with other corporations and with in-

Order

50 F. T. C.

dividuals, partnerships and others engaged in the sale of fertilizers.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were true and into the purchase of substantial quantities of respondents' product because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors in commerce and substantial injury has been done to competition in commerce.

CONCLUSION

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

ORDER

It is ordered, That the respondent Garden Research Laboratories, a corporation and its officers, and the respondent Cecil C. Hoge, individually and as an officer of said corporation, and the respondents Cecil C. Hoge, Hamilton Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, individually and as copartners doing business as Huber Hoge and Sons, or under any other name, and the respondent Alfred S. Pfeil, individually, and said respondents' agents, representatives 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 chemical fertilizer designated RX-15, or any other product containing substantially the same ingredients or possessing substantially the same properties, do forthwith cease and desist from representing, directly or by implication:

1. That RX-15 is the scientific designation of a plant food.
2. That said product is a new plant food or new discovery, or that it was developed as a result of atomic research.
3. That persons identified with any college, university or other institution of learning discovered said product, conducted tests or made reports with respect thereto, unless such be the fact.
4. That personnel identified with Rutgers University or any other educational institution made photographs showing the results obtained by the use of respondents' product or that the United States Atomic Energy Commission had taken photographs pertaining to

424

Order

respondents' product or authorized the use by respondents of any such photographs.

5. That photographs of plants taken one hour after being fertilized by liquid fertilizer were taken only fifteen minutes thereafter, or representing that photographs were taken at any specified time contrary to the fact.

6. That respondents' product contains radioactive materials.

7. That the use of said product, by sprinkling and without other factors, will assure an abundance of flowers or vegetables on a small patch of ground.

8. That the ingredients of said products are absorbed by the leaves within fifteen minutes, or within any other period of time which is contrary to fact.

9. That dry fertilizers do not produce results for months or other extended periods of time after application, or misrepresenting in any other manner the time within which dry fertilizers are absorbed or produce results.

10. That said product is more powerful than all other fertilizers; or that it supplies 360% more plant food at the rate of 1,000 times faster than other fertilizers or at any other given quantity or rate inconsistent with the facts, or misrepresenting in any other manner the amount of plant food supplied by said product or the period of time within which such plant food takes effect in comparison with other fertilizers.

11. That said product is substantially cheaper in price under conditions of effective use than all other fertilizers.

12. That there are vitamins and hormones contained in said product which aid plant growth.

13. That the amount of plant food supplied by said product, when in a water solution, is any amount in excess of the quantity of respondents' product actually present in such solution; or that, under such conditions of use, the cost of said plant food is less than it is in fact.

14. That other fertilizers, even though used according to directions, may injure plants.

15. That respondents' product, unlike other fertilizers, will not burn or injure foliage, even though not used according to directions.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 13, 1953].

IN THE MATTER OF
WILLIAM G. BARNARD, SR. ET AL. TRADING AS
NATURAL FOODS INSTITUTE

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

Docket 5956. Complaint, Feb. 21, 1952—Decision, Nov 18, 1953

Where two partners, trading as Natural Foods Institute, engaged in the interstate sale and distribution of health foods, books, drugs, and devices of various sorts; in advertising in catalogs bearing their said name, and in various other ways, seven products which they designated as: "Chic Tablets", "Garlic Capsules", "Papain Tablets", "Soy Milk Powder (Soyalac", "Macu Brand Papaya", "Peppermint Tea", and "Alfalfa Tea"—(a) Falsely represented that their said products, as the case might be, would reduce weight, were odorless, constituted an effective treatment for indigestion, were a tonic which would sweeten the intestinal tract, and would have a significant effect upon the building of muscle, bone, or hair by reason of the alfalfa nutrients; that their "Papaya Pulp" contained no sugar and was a valuable food for diabetics; and that it was possible for human beings to contract mastitis from animal milk and that the use of their "Soya Milk Powder" would prevent the contraction of such disease; and

Where said partners, engaged as aforesaid, in also selling and distributing certain foods, namely, their "Dr. Gaymont's Yogourt Culture", "Red Beet Juice", "Brown Rice", "Dehydrated Powdered Vegetables", and "Celery Juice"—

- (b) Falsely and misleadingly represented that said "culture" was an effective treatment for stomach ulcers or colitis, that their said beet juice built up red blood or red corpuscles of the blood and toned up the blood, that their said dehydrated powdered vegetables were more easily digested and more nutritious than fresh vegetables; and that their celery juice was an effective treatment for arthritis and rheumatic conditions; and

Where said partners, engaged as aforesaid, in the offer and sale also of certain health books which they designated as "Raw Vegetable Juices", "Health Via the Carrot and Other Vegetables", "The Grape Cure", and "My Water Cure"; in advertising the same through their aforesaid catalogs and otherwise—

- (c) Falsely and misleadingly represented that a deficiency of minerals and salts in the diet was the primary cause of nearly every sickness and disease, that the eating of raw vegetables and fruit juices in the manner set forth in said first book was a cure for numerous specified ailments and conditions, comprising most of the common ailments suffered by mankind and that eating carrots and other vegetables in the manner set out in said second book would keep one healthy and constituted a cure for numerous ailments, including diabetes, diseases peculiar to women, colds, arthritis, and cancer, and a tired feeling;

Notwithstanding the fact as respects said last-named condition that only rarely does it result from dietary deficiencies of the type which can be corrected through any possible use of carrots and other vegetables; and

- (d) Falsely and misleadingly represented that the system outlined in "The Grape Cure" would cure cancer and that outlined in "My Water Cure" would cure all diseases in any way curable; and

Where said partners, engaged as aforesaid in the offer and sale also of certain juice extractors sold under the designations "Vita-Mix" and "Juicex"; in advertising the same in catalogs, newspapers, magazines, circulars, and in radio and television broadcasts, and in other advertising media—

- (e) Falsely and misleadingly represented that the consumption of raw fruits and vegetables prepared in said Vita-Mix would result in better digestion, restful sleep, normal elimination, strong, healthy teeth, or continued good eyesight, and was an effective treatment for various ailments, including those above indicated, and would result in good health;
- (f) Falsely represented that nutritional deficiencies were increasing and that, according to the Department of Agriculture, three out of every four meals in the United States were deficient in the minimum daily requirement of vitamins, minerals, and other nutrients, and that 90% of the rejections in the draft of World War II were because of malnutrition, and that cooked and peeled vegetables were so deficient in nutritional qualities that children's teeth and tonsils were adversely affected;
- (g) Falsely represented that Vitamin E was the antisterility vitamin and that the ingestion of Vitamin A would build resistance against all infectious diseases;
- (h) Falsely represented that the consumption of the entire cucumber was an effective treatment for nervous conditions in women and that the consumption of lettuce was an effective treatment for such conditions generally;
- (i) Falsely represented that the necessity for the removal of tonsils in children arose because of malnutrition; and
- (j) Falsely represented that the consumption of fruit and vegetable juices prepared in the Juicex would assure health, vigor, and charm, and that consumption of such juices would regenerate and rebuild the system; and

Where said partners, engaged as aforesaid—

- (k) Falsely represented through the use of the word "Institute" in their trade name that they constituted an organization for the promotion of research, experimentation, investigation, and study in the science of dietetics and related subjects, and that a trained staff of employees and a properly equipped laboratory were maintained for such purposes;

When in fact there were no lectures or courses in dietetics in given subjects given by trained technical lecturers and said representation was otherwise false in the respect above indicated; and

- (l) Falsely represented through the use of the word "sterilizer" in the trade name of their "N. F. I. Vegetable and Fruit Washer and Sterilizer" in the advertising thereof in their catalogs and other media, that their said apparatus had a germicidal effect;

When in fact it had no such effect of any nature, but was a device which consisted essentially of a wire basket and a length of hose to be attached to a water faucet for use in washing vegetables:

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

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

Mr. George M. Martin and *Mr. J. M. Doukas* for the Commission.

Mr. Henry Junge, of Chicago, Ill., for 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 21, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the service of the said complaint, respondents filed their answer thereto admitting all of the material allegations of fact charged in the complaint to be true, waiving any and all hearings as to the facts and conclusions and consenting to the issuance of an order, reserving, however, the right to file objections to the form and contents of the order. Thereafter the proceeding regularly came on for final consideration by a hearing examiner of the Commission, duly designated by it and named in the "Notice" appended to the complaint at the time of its issuance, upon the said complaint and respondents' answer thereto, and said hearing examiner, on April 24, 1952, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal, no oral argument having been requested.

The Commission on March 31, 1953, issued its order granting respondents' appeal. On the same day the Commission issued, and thereafter caused to be served, its order granting leave to respondents and to counsel supporting the complaint to file with the Commission objections to the order to cease and desist which the Commission proposed to issue as a part of its decision herein, after making appropriate findings as to the facts and conclusion consonant with the pleadings; under the terms of this order such objections were to be filed within twenty days after service thereof and the proposed order to cease and desist attached thereto.

No objections were filed by respondents. On April 23, 1953, counsel supporting the complaint filed objections to the proposed order to cease and desist, and also filed a motion for reconsideration by the Commission of its order granting respondents' appeal.

The Commission having entered its order denying the said motion and rejecting the objections to the proposed decision, the proceeding came on for final consideration by the Commission upon the record herein on review, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents William G. Barnard, Sr., and William G. Barnard, Jr., are copartners trading as Natural Foods Institute with their office and principal place of business at Olmstead Falls, Ohio. Respondents sell and distribute various items of merchandise including health foods, books, drugs, and devices of various sorts.

PAR. 2. Respondents are now and have been for more than one year last past engaged in the business of selling and distributing foods, drugs and devices as the terms "food," "drug" and "device" are defined in the Federal Trade Commission Act. The designation used by respondents for various of their said food and drug products and the formulae and directions for use thereof are as follows:

(1) Designation: Chic Tablets.

Formula: 9 tablets daily represent the following percentage of minimum daily adult requirements.

Vitamin B ₁ (Thiamine Hydrochloride)	333 U. S. P. Units 100%
Vitamin B ₂ (Riboflavin)	2 Milligrams 100%
Niacinamide	10 Milligrams 100%
Calcium (Calcium Phosphate Dibasic)	920 Milligrams 120%
Phosphorous (Calcium Phosphate Dibasic)	750 Milligrams 100%
Iron (Ferric Peptonate)	15 Milligrams 100%
Iodine (Kelp)	0.10 Milligrams 100%

Also contains skimmed milk powder, malt extract, dextrose, cocoa powder and flavor, with traces of zinc, magnesium cobalt, copper and manganese.

Directions: Take 3 tablets about 15 to 20 minutes before each meal. Tablets may be swallowed whole with water or fruit juice, or chewed if desired. If one meal is omitted (preferably lunch) it is suggested that 4 tablets be taken at this time.

(2) Designation: Garlic Capsules.

Formula: Vegetable oil extraction of garlic.

Directions: TO BE SWALLOWED WHOLE—NOT CHEWED, Take two capsules before each meal three times a day unless otherwise prescribed.

(3) Designation: Papain Tablets 3 gr.

Formula: Dehydrated juice of Carica Papaya.

Directions: Take one or two tablets to help occasional stomach distress.

(4) Designation: Soy Milk Powder (Soyalac)

Formula: Contains: Soya beans, dextrin, dextrose, soya bean oil, maltose, sugar, salt, dicalcium phosphate, trisodium phosphate, viosterol.

Directions: How to make Soya Milk.

With Soyalac being readily soluble in cold water, a whip, egg beater, hand or electric mixer readily serves the purpose for mixing. Always add powder to water, an ounce (approximately a heaping tablespoon) to a glass, more or less

Findings

50 F. T. C.

to individual taste. Then use like milk, 4 ounces Soyolac makes approximately a quart of soya milk, 1 pound a gallon.

(5) Designation : Macu Brand Papaya

Formula : Papaya Pulp

Directions : Take in pure state or mix with water, milk, fruit juices, honey, sugar, saccharine or flavors to suit taste. Keep in cool place, tightly closed when not in use.

(6) Designation : Peppermint Tea

Formula : Peppermint leaves

Directions : Pour boiling water over and let steep to desired strength and serve with or without cream and sugar.

(7) Designation : Alfalfa Tea

Formula : Tender, small alfalfa leaves.

Directions : Pour boiling water over and let steep to desired strength and serve with or without cream and sugar.

In addition to the aforesaid products respondents sell and distribute the following foods, to wit : Dr. Gaymont's Yogourt Culture, Red Beet Juice, Brown Rice, Dehydrated Powdered Vegetables, Celery Juice, and devices designated as NFI Vibrator and Oster Stim-U-Lax Junior.

Respondents cause the said products hereinabove listed in Paragraph One when sold to be shipped from their place of business in the State of Ohio to purchasers thereof located in various 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 their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of advertisements concerning their said products set out in Paragraph Two, by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to catalogs entitled "Natural Foods Institute, Olmstead Falls, Ohio" and respondents have disseminated and caused the dissemination of advertisements concerning their said products by various means, including but not limited to, the catalogs referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements contained in the said catalogs disseminated as aforesaid and the products to which they relate are the following:

(1) Chic.

CHIC

Reducing Formulae

Get rid of ugly fat now. You can be slim the easy way, without drugs or opiates. Many have received wonderful results from Chic. This food supplement furnishes the necessary food materials without adding on the pounds. We're so sure that this Reducing Formula will give you the results you've been looking for that we make you a Money-Back Guarantee.

(2) Pure Garlic Capsules.

PAPA BARNARD Says: "Odorless and tasteless, but still essential for my diet."

Dr. Kellog in "New Dietetics" says garlic is a natural disinfectant of the alimentary canal. Used by thousands who value their health.

(3) Papain Tablets

Perfect for indigestion. Takes away gas and discomfort.

(4) Soy Milk Powder.

Eliminates all danger of * * * mastitis, * * * sometimes contracted from the use of animal milk. * * *

(5) Papaya Pulp.

PAPAYA PULP for diabetics. No sugar in it.

(6) Peppermint Tea

California

PEPPERMINT TEA

Dried Mineralized peppermint leaves are an alkalizer and a natural tonic. Sweetens the entire intestinal tract.

(7) Alfalfa Tea.

ALFALFA TEA

Alfalfa helps produce muscle, bone and hair. You need the vitamins and minerals Alfalfa Tea gives you. Animals thrive on alfalfa—why not you? Now adapted for human consumption.

(8) Dr. Gaymont's Yogourt Culture.

* * * Gives relief from Stomach Ulcers * * *

Dr. Gaymont's

YOGOURT CULTURE

Here Is What Dr. Gaymount's Yogourt Culture Will Do For You!

* * * * *

Are you healthy? Dr. Gaymount's Yogourt, nature's most perfect food, will help you stay healthy and help you enjoy life. Suffering from Colitis? Delicious Yogourt is unexcelled for soothing relief in the corrective diet. * * * Stomach Ulcers! Be relieved. Yogourt is wonderfully alkalizing, pain comforting. * * *

(9) Red Beet Juice.

Pure Unadulterated

RED BEET JUICE

* * * "This is one of the most valuable juices for helping to build up red blood or red corpuscles of the blood and tone up the blood generally." Red Beet Juice is high on list of beneficial vitamin and mineral juices.

Findings

50 F. T. C.

(10) Brown Rice.

* * * Contains all the essential minerals and vitamins.

(11) Dehydrated Powdered Vegetables.

* * * The walls and shells of a vegetable cell contain cellulose—which cannot be digested by man. In dehydrated vegetables these cell walls have been broken and destroyed so that you can get the inner nutritious part with the full food value. * * *

(12) Pure Celery Juice.

* * * Dr. R. D. Pope, M.D., especially recommends celery juice in the dietary care of arthritis and rheumatic conditions in his book, "Raw Vegetable Juices, What's Missing in Your Body."

(13) NFI Vibrator.

Helps Get Rid of Aches and Pains

BLOOD CIRCULATES BETTER

with the NFI

VIBRATOR.

(14) Oster Stim-U-Lax Junior.

I use the Stim-U-Lax before retiring. It seems to make my rich red blood circulate more smoothly.

PAPA BARNARD

Just try an OSTER STIM-U-LAX Junior on your body, face, gums, scalp, arms, feet. You'll be amazed! Massage is man's oldest method for soothing his ails, and OSTER STIM-U-LAX Junior enables you to give it more effectively than ever before. An OSTER can deliver controllable, rotating-patting movements to your fingertips to make massage mildly soothing or deeply penetrating. Only an OSTER has Suspended Motor action movement—so soothing to the nerves, so nice to the muscles, stimulating to the circulation.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent's have represented directly and by implication:

(1) That their Chic Tablets are a reducing formula and will in and of themselves reduce weight.

(2) That their Garlic Capsules are odorless in use and are an intestinal disinfectant.

(3) That their Papain Tablets are an effective treatment for indigestion.

(4) That mastitis may be contracted through the use of animal milk and that the use of Soy Milk Powder will prevent the contracting of such disease.

(5) That their Papaya Pulp does not contain any sugar and therefore is a valuable food for diabetics as part of their diets.

(6) That their Peppermint Tea is a tonic and sweetens the entire intestinal tract.

(7) That their Alfalfa Tea helps produce muscle, bone and hair in human beings.

(8) That Dr. Gaymont's Yogourt Culture is an effective treatment for stomach ulcers and colitis.

(9) That their Red Beet Juice builds up red blood or red corpuscles of the blood and tones up the blood.

(10) That their dehydrated powdered vegetables are more digestible and nutritious than vegetables in any other forms.

(11) That their Celery Juice is an effective treatment for arthritis and rheumatic conditions.

(12) That the use of the NFI Vibrator rids the human body of aches and pains and stimulates or improves the circulation of the blood throughout the body.

(13) That the use of Oster Stim-U-Lax Junior stimulates or improves the circulation of the blood throughout the body.

PAR. 6. The said advertisements are misleading in material respects, and are "false advertisements" as the term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) The Chic Tablets are not a reducing formula; will have no influence whatsoever on obesity and in and of themselves will not bring about weight reduction. It is necessary to use a restricted diet to bring about weight reduction and said tablets are merely a dietary supplement.

(2) The Garlic Capsules are not odorless in use since they contain significant quantities of oil of garlic which produces an odor on the breath. This product is not an intestinal disinfectant.

(3) The Papain Tablets are not an effective treatment for indigestion.

(4) It is not possible for human beings to contract mastitis from animal milk or otherwise.

(5) The Papaya Pulp is not a valuable food for diabetics because it contains significant amounts of sugar.

(6) The California Peppermint Tea is not a tonic nor will it sweeten the intestinal tract.

(7) The amounts of nutrients which can be extracted from the alfalfa during the preparation of an infusion or tea will have no significant effect upon the building of muscle, bone, or hair.

(8) Dr. Gaymont's Yogourt Culture is not an effective treatment for stomach ulcers or colitis.

(9) Red Beet Juice will not build up red blood or red corpuscles or tone up the blood to any significant extent.

(10) Dehydrated powdered vegetables are not more easily digested or more nutritious than fresh vegetables.

Findings

50 F. T. C.

(11) Celery juice has no therapeutic value in the treatment of arthritis or rheumatic conditions.

(12) The benefits from the NFI Vibrator are limited to those which can be secured from massage. In some cases the use of massage, such as that obtained with this device, will tend to temporarily relieve aches and pains although there are many types of aches and pains which will not even be temporarily diminished through the use of such a device. The massage secured through the use of this device will temporarily stimulate the flow of the blood in that part of the body being massaged, but the use of the device would not serve to stimulate or improve the circulation of the blood generally throughout the body.

(13) The massage secured through the use of the Oster Stim-U-Lax Junior would temporarily stimulate the flow of blood in the part of the body being massaged but the use of the device would not serve to stimulate or improve the circulation of the blood generally throughout the body.

PAR. 7. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of certain of their health books designated "Raw Vegetable Juices," "Health Via the Carrot and Other Vegetables," "The Grape Cure" and "My Water Cure," in the commerce aforesaid respondents have also made numerous statements concerning said books through the medium of the aforesaid catalogs and by other means. Among and typical of the aforesaid statements and the books to which they relate are:

(1) The book entitled "Raw Vegetable Juices"

The lack or deficiency of certain elements such as vital organic mineral and salts from our customary diet is the primary cause of nearly every sickness and disease, says Dr. Pope. He answers this vital question in his book—"how can we most readily furnish our body with the elements needed?" * * *

Look at the fascinating subjects covered. Arthritis, gall bladder trouble, anemia, tuberculosis, asthma, heart trouble, indigestion, colitis, constipation, boils, cancer, convulsions, diabetes, high blood pressure, liver, miscarriage, rheumatism, eczema, goiter, liver trouble, kidney trouble, obesity, nervousness, prostate trouble, in fact most all of the common ailments suffered by mankind.

TO OVERCOME CERTAIN DISEASES LEARN WHAT JUICES YOUR BODY NEEDS.

One of the most sensational parts of this fascinating book is a section entitled "Raw vegetable and fruit juices and their therapeutic use in specific ailments." Dr. Pope has taken such diseases as cancer, chicken pox, the common cold, hernia, hives, indigestion, constipation and many others and tells you what fruit and vegetable juices you should eat in order to overcome these diseases.

(2) The book entitled "Health Via the Carrot and Other Vegetables."

HOW TO STAY HEALTHY BY EATING PROPERLY.

Indigestion—the Glands—Headaches—Rheumatism—Blood Stream—Diabetes—That Tired Feeling—Asthma—The Women's Problem—Colds and Influenza—Arthritis—Cancer.

Prevent Disease.

Learn Foods you need for LONGER, HAPPIER LIFE.

No longer need you worry about crippling diseases and ailments.

(3) The book entitled "The Grape Cure" by Johanna Brandt.

Can Cancer be Relieved?

In inspiring fashion, Miss Brandt gives you her explanation of the causes of cancer. She had cancer herself. She tried many cures, which didn't work. Nine years she fought a grim battle. Three more years went by. In 1925 she accidentally discovered the miracle of the grape.

Johanna Brandt has learned the reasons for the success of the grape cure. In 15 chapters, she tells how the grape is taken, why it is effective.

(4) The book entitled "My Water Cure" by Father Kneipp.

Father Kneipp said "The water, in particular, my water cure, heals all diseases in any way curable."

PAR. 8. Through the use of the aforesaid representations disseminated as aforesaid, and others similar thereto but not specifically set out herein, respondents have represented, directly or by implication:

(1) That a deficiency of minerals and salts in the diet is the primary cause of nearly every sickness and disease, and the eating of the raw vegetable and fruit juices in the manner set forth in the book "Raw Vegetable Juices," is a cure for arthritis, gall bladder troubles, anemia, tuberculosis, asthma, heart trouble, indigestion, colitis, boils, cancer, convulsions, diabetes, high blood pressure, miscarriage, rheumatism, eczema, goiter, liver trouble, kidney trouble, obesity, nervousness, prostrate trouble, chicken pox, the common cold, hernia or hives and most of the common ailments suffered by mankind.

(2) That by eating carrots and other vegetables in the manner set out in the book "Health Via the Carrot and Other Vegetables," one can prevent disease, live longer and remain healthy and that such diseases and ailments as indigestion, glandular troubles, headaches, rheumatism, disorders of the blood stream, diabetes, a tired feeling, asthma, diseases peculiar to women, colds, influenza, arthritis and cancer will be cured thereby.

(3) That the system or method of treatment outlined in the book entitled "The Grape Cure" will relieve or cure cancer.

(4) That the system or method of treatment outlined in the book entitled "My Water Cure" is a cure for all curable diseases.

PAR. 9. The aforesaid statements are false, misleading and deceptive. In truth and in fact:

(1) A deficiency of minerals and salts in the customary diet is not the primary cause of nearly every sickness and disease and no possible

Findings

50 F. T. C.

combination of raw vegetable and fruit juices is a cure of arthritis, gall bladder trouble, anemia, tuberculosis, asthma, heart trouble, indigestion, colitis, boils, cancer, convulsions, diabetes, high blood pressure, miscarriage, rheumatism, eczema, goiter, liver trouble, kidney trouble, obesity, nervousness, prostate trouble, chicken pox, the common cold, hernia or hives or any significant number of the common ailments suffered by mankind.

(2) Eating the carrots and other vegetables in the manner set out in the book, "Health Via the Carrot and Other Vegetables" will not keep one healthy and is not a cure for indigestion, glandular troubles, headaches, rheumatism, disorders of the blood stream, diabetes, asthma, diseases peculiar to women, colds, influenza, arthritis or cancer. The condition popularly known as "a tired feeling" arises from a multitude of causes and only rarely does it result from dietary deficiencies of the type which can be corrected through any possible use of carrots and other vegetables in the diet.

(3) The system or method of treatment outlined in the book entitled "The Grape Cure" will not relieve cancer, or cure cancer.

(4) The system or method of treatment outlined in the book entitled "My Water Cure" is not a cure for any curable disease.

PAR. 10. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of certain of their juice extractors in the commerce aforesaid, the respondents have made numerous statements by means of advertisements inserted in catalogs, in newspapers, magazines, circulars and in radio and television broadcasts and in other advertising media. Among and typical of such statements and the juice extractor to which they relate are the following:

(A) VITA-MIX

WHAT DO YOU WANT? BETTER DIGESTION
RESTFUL SLEEP
NORMAL ELIMINATION
STRONG HEALTHY TEETH
CONTINUED GOOD EYESIGHT

USE A VITA-MIX TO PREPARE YOUR MEALS AND DRINK YOUR WAY TO HEALTH

VITAMINS AND MINERALS May Help Build Resistance Against Most Common Ailments. GET THEM THE VITA-MIX WAY—

The Dept. of Agriculture admits that 3 out of every 4 meals are short of vitamins and minerals. No wonder so many people feel run-down, worn out, tired all the time. * * *

Nutritional deficiencies are increasing * * * According to the U. S. Department of Agriculture, 3 out of 4 meals are deficient in the minimum daily requirements * * *.

VITAMINS AND MINERALS ARE ESSENTIAL TO GOOD HEALTH WHY NOT BE SURE YOU GET ALL THAT ARE IN YOUR FOOD?

Most of the vitamins in your food are in the out parts, those which you normally peel off and throw away. With a Vita-Mix you will never need to lose these precious health-giving vitamins * * *. Cooking also destroys much of the vitamin and mineral content of food. You pour these vital compounds down the drain when you prepare food the ordinary way. Why should you throw out the things that are so important to strong teeth, good digestion, eyesight, vigor, body tone. Get a Vita-Mix and be sure you get all the vitamins and minerals nature put into your food.

Your health depends on vitamins and minerals which nature has placed next to and in the skins of fruits and vegetables. Peeling and boiling destroy these valuable elements that are vital to your good health and enjoyment of life. * * *

LOOK AT THESE RESULTS

"Although I am only 28 years old I have had bowel trouble for the last 3 or 4 yrs. Thanks to my Vita-Mix, I can do as you say—throw out the laxative bottle."

Mrs. A. S., Cincinnati, Ohio.

The following advertisement excerpts are taken from television transcripts entitled "Home Miracles of 1950" in which respondent W. G. Barnard, Sr., appeared and which were transmitted from various cities located throughout the United States. The television broadcasts consisted of demonstrations by respondent W. G. Barnard, Sr., of the use of the Vita-Mix and lectures by said W. G. Barnard, Sr., on the value of various juices which can be extracted through the use of this device. The lecture is also directed towards the alleged unhealthful cooking habits employed throughout the nation and the various ills which arise as a result thereof. All of these statements were intended to influence the purchase of the Vita-Mix. Among and typical of the statements made during the course of the demonstration and lecture on the aforesaid television broadcasts are:

I happen to be president of the Natural Foods Institute, as you know. And we are trying to teach the mothers of America exactly what the Red Cross and the Parent-Teachers Association are trying to put over—and that is, you must, mother, you must change the diet of your family, or America is going blind. Do you know that right now, one-half of us—children and all—are looking through a pane of glass? Do you know that right now half of us in America hasn't got a tooth in their mouth except what they bought from their dentist? * * *

* * * A million boys went before our draft boards in the last world war and four hundred and sixty thousand of them were rejected. Think of it, Brigadier General Louis B. Hershey said that it's a national disgrace, that ninety percent of those boys were rejected because of malnutrition—at the dining table. * * *

* * * And the first meal she gives the child is one of the most demineralized, de-vitalized meals which she could possibly give him—which is mashed potatoes. * * *

Findings

50 F. T. C.

* * * There's only one way to eat that potato if you want your family to have eyes, teeth, and tonsils. And that's to put it in the oven and bake it, skin and all. But no, Mommy says Daddy doesn't have any teeth. He can't eat the skin. And she doesn't have any teeth—she can't eat the skin. And the reason they don't have any teeth is because they didn't eat the skin. So she takes a knife. And she peels off those eight minerals and four vitamins as if they were poison. Then she throws them in the garbage can. There go their eyes and their teeth. Then she notices the little brown specks, the eye—the Vitamin E. That's the vitamin that reproduces the potato. That's the vitamin that she and poppa must have if they reproduce. The reproductive vitamin—vitamin E. She doesn't want it—she gouges it out, she throws it in the garbage can. And then she takes the knife, she cuts the potato half in two, puts it in a pot of water, and for twenty-five minutes now she does give it the works. She boils out every mineral and vitamin. And after she does get them all boiled out, what does she do with them? Why she trots right over to the kitchen sink and drains the whole works down the sewer. * * *

* * * Do you know that half of the people over twenty-seven years of age haven't got a tooth in their mouth except what they bought of the dentist? And a great deal of it is caused by malnutrition. Do you know that a high percentage of our children are losing their tonsils because of malnutrition? * * *

* * * So she takes that blessed carrot and she slices and she dices. It says stew thirty-five minutes, so she turns up the gas. She boils out the iodine * * *. She boils out the Vitamin A that builds the eyes, the Vitamin B that builds the nerves, * * * and then she trots over to the kitchen sink and drains them down the sewer. Down the drain goes the Vitamin A that builds resistance against all infectious diseases. Down the drain goes the Vitamin A that builds the eyes. * * *

She cuts it out. She throws it in the garbage can. The Vitamin E. The Anti-Sterility Vitamin.

* * * Why you'll drink that cucumber, skin and all, in just a few minutes time. Here's one of the finest vegetables—one of the finest vegetables on earth for the nerves, for women. * * *

* * * Every vegetable has some therapeutic value. And this one, we are told, is good for the nerves. You know, Grandma used to say lettuce contained opium because it made her sleepy. * * *

* * * Seventy percent of the American people are deficient in calcium according to our government report. * * *

(B) JUICEX

HOW TO HAVE HEALTH, VIGOR, CHARM—THE NATURAL WAY

DRINK JUICES MADE WITH YOUR JUICEX

Look at These Facts on Juices

An unfailing source of life-giving elements are found in fresh juices. Authorities on food and nutrition agree that raw fruit and vegetable juices, if taken fresh and without preservatives, are easily assimilated. They are an organic or life food and will regenerate and build up your whole system. There is no known simpler way to make up for the minerals and vitamins you miss in today's highly refined foods. Eminent medical authorities agree that vitamins and minerals are essential to good health. Don't take chances, make sure you get enough juices every day.

PAR. 11. Through the use of the statements disseminated as aforesaid and others of similar import, not specifically set out herein, the respondents have represented, directly or by implication, that:

(1) the consumption of raw fruits and vegetables prepared in the Vita-Mix will result in better digestion, restful sleep, normal elimination, strong healthy teeth or continued good eyesight;

(2) the consumption of raw fruits and vegetables prepared in the Vita-Mix is an effective treatment for digestive disturbances, insomnia, disorders of elimination, carious or otherwise diseased teeth and impaired eyesight;

(3) the consumption of raw fruits and vegetables prepared in the Vita-Mix will result in good health;

(4) the consumption of vitamins and minerals increases the individual's resistance to most common ailments;

(5) nutritional deficiencies are increasing and, according to the U. S. Department of Agriculture, three out of every four meals in the United States are deficient in the minimum daily requirements of vitamins, minerals and other nutrients;

(6) the consumption of raw fruits and vegetables prepared in the Vita-Mix is an effective treatment for and a cure for diseases of the bowel;

(7) 90% of the rejections in the draft of World War II were because of malnutrition;

(8) cooked and peeled vegetables are so deficient in nutritional qualities that children's teeth and tonsils are adversely affected;

(9) Vitamin E is the anti-sterility vitamin;

(10) the ingestion of Vitamin A will build resistance against all infectious diseases;

(11) the consumption of the entire cucumber is an effective treatment for nervous conditions in women;

(12) the consumption of lettuce is an effective treatment for nervous conditions;

(13) the necessity for the removal of the tonsils of children arises because of malnutrition;

(14) the consumption of fruit and vegetable juices prepared in the Juicex will assure health, vigor and charm;

(15) expressed fruit and vegetable juices will regenerate and rebuild the system.

PAR. 12. The aforesaid statements are false, deceptive and misleading. In truth and in fact:

(1) the consumption of raw fruits and vegetables prepared in the Vita-Mix will not result in better digestion, restful sleep, normal elimination, strong healthy teeth or continued good eyesight;

(2) the consumption of raw fruits and vegetables prepared in the Vita-Mix is not an effective treatment for digestive disturbances,

Findings

50 F. T. C.

insomnia, disorders of elimination, and will not improve carious or otherwise diseased teeth or improve eyesight;

(3) the consumption of raw fruits and vegetables prepared in the Vita-Mix will not result in good health;

(4) the consumption of vitamins and minerals does not increase the individual's resistance to most common ailments, and the vast majority of ailments suffered by mankind have no relation to vitamin or mineral deficiencies;

(5) nutritional deficiencies are not increasing but on the other hand some types of nutritional deficiencies which were at one time prevalent have now almost disappeared in this country; in fact the survey made by the U. S. Department of Agriculture referred to by respondents did not show that three out of every four meals are deficient in the minimum daily requirements of vitamins, minerals, and other nutrients, but on the contrary showed that the population sample studied in 1935 and 1936 failed by that extent to consume food which met the allowances of the Food and Nutrition Board of the National Research Council, and these allowances were roughly 50 percent higher than the established minimum daily requirements;

(6) the consumption of raw fruits and vegetables prepared in the Vita-Mix is not an effective treatment for or a cure for diseases of the bowel;

(7) only a relatively small percentage of men were rejected in the draft in World War II because of malnutrition;

(8) cooked and peeled vegetables are not so vitally deficient in nutritional qualities that children's teeth or tonsils are adversely affected;

(9) Vitamin E is not the anti-sterility vitamin;

(10) the ingestion of Vitamin A will not build resistance against any infectious diseases;

(11) the consumption of the entire cucumber is not an effective treatment for nervous conditions of women;

(12) the consumption of lettuce is not an effective treatment for nervous conditions;

(13) the necessity for the removal of children's tonsils does not arise because of malnutrition;

(14) the consumption of raw fruit and vegetable juices prepared in the "Juicex" will not assure health, vigor or charm;

(15) the consumption of raw fruit and vegetable juices will not regenerate and build up the system.

PAR. 13. Through the use of the word "Institute" in their trade name respondents represent that the Natural Foods Institute is an organization for the promotion of research, experimentation, investi-

gation and study in the science of dietetics and related subjects and that a trained technical staff of employees and a properly equipped laboratory are maintained for such purposes.

The use of such term is false, misleading and deceptive. In truth and in fact the Natural Foods Institute is not an organization for the promotion of research, experimentation, investigation and study in the science of dietetics and related subjects and there is no trained technical staff of employees, nor a properly equipped laboratory maintained for such purposes. There are no lectures or courses in dietetics or related subjects given by trained technical lecturers.

PAR. 14. Through the use of the word "sterilizer" in the trade name of the N. F. I. Vegetable and Fruit Washer and Sterilizer, respondents have represented that the apparatus has a germicidal effect. Said term appears in the respondents' catalogs and in other advertising media disseminated as aforesaid. The aforesaid term is false, misleading and deceptive. In truth and in fact said apparatus has no germicidal effect of any nature and is a device consisting essentially of a wire basket and a length of hose to be attached to a water faucet for use in washing vegetables.

PAR. 15. The use by the respondents of the foregoing statements disseminated as aforesaid had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations were true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said devices, foods, drugs and other merchandise.

PAR. 16. The complaint alleges that respondents made false or misleading representations concerning the vitamin and mineral content of brown rice, the loss of "most" of the vitamins and minerals in fruits and vegetables when they are peeled, the prevalence of eye troubles, tooth troubles and calcium deficiencies in the United States, and the deficiency in nutritional value of mashed potatoes, peeled potatoes and cooked carrots.

The record does not establish that respondents' representations in these respects were false or misleading.

PAR. 17. The complaint further alleged that respondents represented that certain articles of merchandise could be obtained from them free or as a gift or gratuity. This representation was alleged to be false, misleading and deceptive, as the receipt of said merchandise is conditioned on the purchase of other merchandise or the sale of other merchandise for respondents.

The record shows that respondents represented that upon the purchase, or sale to others, of certain of respondents' merchandise and

Order

50 F. T. C.

the sending in of the purchase price of the merchandise, the person submitting the order would get certain specified merchandise free. There is nothing of record to indicate that this representation is not true. The theory of the complaint is that the merchandise is not free because the recipient must submit an order for other merchandise to get the free item. The Commission is of the opinion that, as the conditions under which the free article can be obtained are fully and clearly stated and as there is no evidence that the price, quality or quantity of the merchandise to be purchased has been changed for the purposes of this free offer, this representation is not misleading or deceptive in any way and does not constitute an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act, as alleged. (For a full discussion of the reasons for the Commission's change in policy on this point, see its decision in the matter of *Walter J. Black, Inc.*, issued September 11, 1953.)

CONCLUSION

The aforesaid acts and practices of respondents, as herein found in Paragraphs 3 through 15 hereof were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

1. *It is ordered*, That the respondents William G. Barnard, Sr., and William G. Barnard, Jr., individually or as copartners trading as Natural Foods Institute, or under any other trade name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their various foods, drugs and devices or any other products or devices of substantially similar composition or construction or possessing substantially similar properties, whether sold under the same name or any other names, do forthwith cease and desist from, directly or indirectly:

(a) Disseminating or causing to be disseminated any advertisement concerning respondents' food and drug products and devices, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(1) that their Chic tablets are a reducing formula, or will reduce weight;

(2) that their Garlic Capsules are odorless in use, or that said Garlic Capsules are a disinfectant of the intestinal canal;

- (3) that their Papain Tablets are an effective treatment for indigestion;
- (4) that mastitis can be contracted by humans;
- (5) that their Papaya Pulp does not contain sugar, or is a valuable food for diabetics;
- (6) that their Peppermint Tea is a tonic, or sweetens the intestinal tract;
- (7) that their Alfalfa Tea produces muscle, bone, or hair in human beings to any significant degree;
- (8) that Dr. Gaymont's Yogourt Culture is an effective treatment for stomach ulcers or colitis;
- (9) That red beet juice will build red blood or red corpuscles of the blood or tone up the blood to any significant degree;
- (10) that dehydrated powdered vegetables are more digestible or nutritious than fresh vegetables;
- (11) that celery juice has any therapeutic value in the treatment of arthritis or rheumatic conditions;
- (12) that the use of the NFI Vibrator provides benefits in excess of those supplied by massage or stimulates or improves the circulation of the blood generally throughout the body;
- (13) that the use of the Oster Stim-U-Lax Junior stimulates or improves the circulation of the blood generally throughout the body;
- (b) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph (a) hereof.

2. *It is further ordered*, That the respondents William G. Barnard, Sr., and William G. Barnard, Jr., individually or as copartners trading as Natural Foods Institute, or under any other trade name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their various foods, drugs, devices, health books, juice extractors or expressors, kitchen equipment, or any other merchandise related to health problems, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- (a) Representing, directly or by implication:
 - (1) that a deficiency of minerals and salts in the diet is the primary cause of nearly every sickness and disease;
 - (2) that eating the various vegetable and fruit juices in the manner recommended in the book entitled "Raw Vegetable Juices" is a cure for

Order

50 F. T. C.

arthritis, gall bladder trouble, anemia, tuberculosis, asthma, heart trouble, indigestion, colitis, boils, cancer, convulsions, diabetes, high blood pressure, miscarriage, rheumatism, eczema, goiter, liver trouble, kidney trouble, obesity, nervousness, prostate trouble, chicken pox, the common cold, hernia, or hives, or the common ailments suffered by mankind;

(3) that by eating carrots and the other vegetables in the manner recommended in the book entitled "Health Via the Carrot and Other Vegetables" humans will remain healthy;

(4) that eating carrots and the other vegetables in the manner recommended in the book entitled "Health Via the Carrot and Other Vegetables" is a cure for indigestion, glandular troubles, headaches, rheumatism, disorders of the blood stream, diabetes, asthma, diseases peculiar to women, colds, influenza, arthritis, or cancer;

(5) that eating carrots and other vegetables in the manner set out in the book "Health Via the Carrot and Other Vegetables" will cure a "tired feeling" unless such representation be expressly limited to such condition when due to a dietary deficiency of the type which can be corrected by eating carrots and other vegetables;

(6) that the system or method of treatment outlined in the book entitled "The Grape Cure" will relieve or cure cancer;

(7) that the system or method of treatment recommended in the book entitled "My Water Cure" is an effective cure for any curable disease;

(8) that the consumption of raw fruits and vegetables prepared in the Vita-Mix results in better digestion, restful sleep, normal elimination, strong healthy teeth, or continued good eyesight;

(9) that the consumption of raw fruits and vegetables prepared in the Vita-Mix is an effective treatment for digestive disturbances, insomnia, disorders of elimination, carious or otherwise diseased teeth, or impaired eyesight;

(10) That the consumption of raw fruits and vegetables prepared in the Vita-Mix will result in good health;

(11) that the consumption of vitamins and minerals increases the individual's resistance to most common ailments;

(12) that nutritional deficiencies are increasing or that according to the U. S. Department of Agriculture, three out of every four meals in the U. S. are deficient in the minimum daily requirements of vitamins and minerals and other nutrients;

(13) that the consumption of raw fruits and vegetables prepared in the Vita-Mix is an effective treatment for or a cure for diseases of the bowel;

(14) that 90% or any substantial percentage of the rejections in the draft in World War II was because of malnutrition;

(15) that cooked and peeled vegetables are so deficient in nutritional quantities that children's teeth or tonsils are adversely affected;

(16) that Vitamin E is the anti-sterility vitamin;

(17) that the ingestion of Vitamin A builds resistance against any infectious diseases;

(18) that consumption of the entire cucumber is an effective treatment for nervous conditions in women;

(19) that consumption of lettuce is an effective treatment for nervous conditions;

(20) that the necessity for the removal of the tonsils of children arises from malnutrition;

(21) that the consumption of fruit and vegetable juices prepared in the Juicex will assure health, vigor or charm;

(22) that the consumption of expressed fruit and vegetable juices will regenerate or rebuild the system.

(b) Using the word "Institute" or any simulation thereof as a part of respondents' trade name, or otherwise representing, directly or by implication, that respondents' business is an organization for the promotion of research, experimentation, investigation and study.

(c) Using the term "Sterilizer" or any other word of similar import, either alone or in conjunction with other words, in the trade name of respondents' kitchen implement "NFI Vegetable and Fruit Washer and Sterilizer," or otherwise representing, directly or by implication, that respondents' implement is a sterilizer or possesses germicidal properties or qualities.

3. *It is further ordered*, That, with respect to the issues raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

4. *It is further ordered*, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Carretta not participating.

Commissioner Mead concurs except for the finding regarding use of the word "free." (See Mead dissent in Walter J. Black, Inc., et al., Docket 5571)

IN THE MATTER OF
LOUIS SHAPIRO TRADING AS PURO COMPANY

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

Docket 5710. Complaint, Nov. 10, 1949—Decision, Nov. 19, 1953

Where an individual engaged in the manufacture and in the interstate sale and distribution of a water softening cleanser designated "Puro"; in promoting the sale of said product through (1) newspaper advertisements reading "BUY ONE—GET ONE FREE * * * Two 25¢ Packages—25¢"; the use of a coupon included in the package of the product or loose in the grocers' cartons thereof, reading "FREE COUPON—Take this Coupon to your dealer and he will give you one 25 cent box of PURO free with purchase of one box at the regular price. 25¢ * * * BUY ONE—GET ONE FREE"; and the placing upon the package the words "PURO—Free Coupon Inside"; (2) the dropping of the word "free" from the phrase "BUY ONE—GET ONE FREE" in his aforesaid advertising, following an April 1948 conference with the Chicago Better Business Bureau; and (3) following an August 1948 conference with officials of the Commission—outgrowth of earlier communications going back to 1946 and the using up of his existing stock of coupons—the issuance of a new form of coupon in which the word "free" was deleted from the body thereof, but continued in the heading, or in which the word was entirely deleted and there was set forth the depiction of a box of the product, and the inscription "BUY ONE—GET ONE" and the words "More for Your Money—2—25¢ Packages for 25¢"; and legend on package reading "BUY ONE—GET ONE", with no reference to "Free Coupon Inside"—

- (a) Represented through the use of the aforesaid statements that the usual and customary retail price of his said product was 25¢ per package; notwithstanding the fact that said product was regularly sold in retail grocery stores at two packages for 25¢; there was no evidence that a single package was ever sold for 25¢; and certain retail stores sold it at 13¢ for a single package and two packages for 25¢;
- (b) Represented, as aforesaid, that if one package was purchased at said 25¢ price, a second would be given "free", that is, as a gift or gratuity without cost to the retail purchaser; notwithstanding the fact that it was not thus given without cost to such purchaser, but was included in the regular retail selling price of 25¢ for two packages, as above noted:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. George M. Martin for the Commission.

Mr. Ralph M. Snyder, of Chicago, Ill., for respondent.