

IN THE MATTER OF
ZONITE PRODUCTS CORP. AND H. W. KASTOR & SONS
ADVERTISING CO., INC.

Docket 4755. Order and opinion, June 23, 1954

Mr. R. P. Bellinger for the Commission.

Littlefield & Marshall, of New York City, for Zonite Products Corp.

Mr. Harris F. Williams and *Mr. B. Blakeney Harris*, of Chicago, Ill., for H. W. Kastor & Sons Advertising Co., Inc.

ORDER RULING ON MOTION OF RESPONDENT ZONITE PRODUCTS
CORPORATION

This matter having come on to be heard upon the motion of the respondent above named which requests under date of March 25, 1954, that this proceeding be reopened and that subparagraph (a) of Paragraph 1 of the order to cease and desist as entered herein on May 17, 1944, be stricken and eliminated; and

The Commission having duly considered such motion and the answer in opposition thereto as filed by counsel who appeared in support of the complaint, and having concluded for the reasons stated in the accompanying opinion that the motion should be denied:

It is ordered, That the respondent's motion be, and it hereby is, denied.

OPINION OF THE COMMISSION

By CARRETTA, Commissioner:

This matter came on for our consideration upon the letter dated March 25, 1954, and submitted on behalf of Zonite Products Corporation by its Vice President-Treasurer, requesting that the order to cease and desist heretofore entered by the Commission on May 17, 1944, be modified by striking or eliminating subparagraph (a) of Paragraph 1 therefrom. Answer in opposition to the granting of such request has been filed by counsel who appeared in support of the complaint during the course of the original proceedings, and we are treating such letter as a motion duly filed on this respondent's behalf.

The provision of the order to which the request relates forbids the dissemination in commerce of any advertisement relating to the medicinal preparations "Zonite Liquid" and "Zonitors" which represents, directly or by inference:

“(a) That said preparations will destroy all germs or bacteria in the genital tract, or destroy germs or bacteria which they contact in the genital tract, or that they constitute a treatment for infections of the genito-urinary tract, unless it is clearly and conspicuously revealed in immediate connection therewith that it is not always possible for said preparations to contact all germs and bacteria in the genito-urinary tract.”

In support of the motion, it is stated that other companies in promoting sales of their feminine hygiene preparations have for many years been disseminating advertisements containing statements similar to those to which the proscriptions of the challenged paragraph relate but that no revealing statements, however, have been included in them to the effect that it is not always possible to contact all germs in the genito-urinary tract as required of respondent in similar circumstances under the order. The motion contends that the apparent failure of the Commission following its decision in the instant case to institute additional proceedings directed to practices used in connection with the advertising of similar products and the serious competitive disadvantage assertedly stemming from the respondent's compliance with the order support conclusions that requirements for disclosures or revealing statements no longer are deemed by the Commission to be in the public interest and that elimination of such requirement in connection with respondent's future advertising would be in the public interest.

Under the Federal Trade Commission Act, the Commission is empowered and directed to prevent the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce and it is the intention and purpose of the Commission, in keeping with that mandate, ultimately to reach all who violate the laws administered by the Commission. The circumstance that the Commission has not instituted additional proceedings directed to practices engaged in by others in connection with the advertising and sale of products used for feminine hygiene purposes should not be construed as indication that the Commission regards the dissemination of advertisements in commerce which are in fact false or misleading as other than unlawful, or that it has determined as a matter of administrative policy that advertisements which are false by reason of a failure to reveal facts material in the light of other representations made therein are not appropriate subjects for corrective action in the public interest. In appraising the foregoing contentions of the respondent, it must be noted also that elimination from the order of the provision as challenged manifestly would free respondent from

its restraints against unqualified representations to the effect, among others, that the respondent's preparations are effective in destroying germs and bacteria in the genital tract and constitute adequate treatments for infections in the genito-urinary tract. These representations, and others as formerly used by respondent in its advertising, were found to be false, misleading, and grossly exaggerated and no rational basis exists for an assumption that such representations, if resumed, would not have the same capacity and tendency to mislead the purchasing public and to induce the purchase of respondent's preparations under such erroneous and mistaken beliefs as characterized their use in the first instance. Elimination of the provision as requested, therefore, would essentially serve to subordinate the interests of the consuming public to other considerations and the contentions that such modification is required in the public interest either by reason of a change in Commission policy or in recognition of competitive advantages assertedly denied to respondent must be rejected.

As additional grounds for requesting elimination of this paragraph of the order, it is contended also that no adequate standard is provided as to when the revealing statement or qualifying phrase there referred to should be used, that such provision is seriously deficient as a guide either to respondent or to members of the Commission's staff whose duties look to securing compliance with and enforcement of the Commission's orders to cease and desist and that any attempted enforcement thereof would be impracticable. If well taken as to this particular provision, these alleged deficiencies would be equally applicable to subparagraph (b), the next succeeding provision of the order to cease and desist, respecting which no request for its elimination appears in the motion.

As to the argument that "no adequate standard is provided as to when the qualifying phrase is required", we note that the order specifically relates to advertisements for the preparations which are disseminated in commerce or disseminated by any means for the purpose of inducing or which are likely to induce, directly or indirectly, their purchase in commerce. Furthermore, as expressly stated by the respondent in its letter of March 25, 1954, "The effect of the * * * order quoted above is to require this company, in advertising its products Zonite Liquid and Zonitors, to reveal conspicuously that it is not always possible for said preparations to contact all germs or bacteria in the genito-urinary tract, in immediate connection with certain representations." The representations to which the challenged subparagraph refers, manifestly, are clearly described and identified in its provisions. It is true, however, that such language does not

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attempt the obviously impracticable task of enumerating or calling a roll of the diverse words, phrases and statements which, if used in various situations and word settings, would imply that the respondent's preparations can be relied upon to afford the benefits referred to in the conditions under which they are to be used. This circumstance, however, does not mean that the order is lacking in clarity as to when the revealing statement should be used or deficient as a guide in that respect or that its enforcement would be impracticable. It nowise appearing that the scientific facts which were bases for the findings as to the facts issuing in the original proceeding have changed or are erroneous, we have concluded that modification of the order as requested is not required in the public interest, and our order which is issuing separately here accordingly denies the respondent's motion.

IN THE MATTER OF
THE LEBLANC CORP. ET AL.

Docket 5925. Amended complaint, Feb. 8, 1952—Decision, June 24, 1954

Charge: Advertising falsely therapeutic qualities, composition, testimonials, etc.; in connection with sale of "Hadacol" drug preparation.

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

Mr. Joseph Callaway for the Commission.

Cahill, Gordon, Reindel & Ohl, of New York City, and *Cahill, Gordon, Zachry & Reindel*, of Washington, D. C., for The LeBlanc Corp.

Voorhies & Labbe, of Lafayette, La., and *Mr. Robert E. Freer*, of Washington, D. C., for Dudley J. LeBlanc.

DECISION OF THE COMMISSION

This matter coming on to be heard by the Commission upon its review of the hearing examiner's initial decision dismissing the complaint herein; and

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

It is ordered, That the hearing examiner's initial decision, a copy of which is attached, shall, on the 24th day of June 1954, become the decision of the Commission.

Commissioner Mead not participating.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On February 8, 1954, counsel for the Trustee of the Estate of the LeBlanc Corporation submitted his thirteenth motion for a further extension of time within which to answer the complaint herein, and counsel supporting the complaint responded thereto by submitting a motion to dismiss the complaint without prejudice. To this motion respondents have offered no opposition.

The original complaint herein was issued on September 28, 1951, and an amended complaint on February 8, 1952. These documents allege that respondent corporation and Dudley J. LeBlanc, individually and as President and Sales Manager of the LeBlanc Corporation, have violated Sections 5 and 12 of the Federal Trade Commission Act by the dissemination of false advertisements of a preparation designated "Hadacol." All alleged violations are asserted to have occurred