

Complaint

IN THE MATTER OF

E. R. FERGUSON, JR., ET AL. TRADING AS THE
BERJON COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6408. Complaint, Aug. 25, 1955—Decision, Nov. 10, 1955*

Consent order requiring sellers in Memphis, Tenn., and their advertising agency, to cease disseminating false advertisements in newspapers and by radio broadcasts concerning their "Pep-Ti-Kon" vitamin and mineral preparation.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William R. Tincher for the Commission.

Mr. Don B. Gatling, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that E. R. Ferguson, Jr., and John R. Pepper, individually and as copartners trading as The Berjon Company; and Brick Muller and Associates, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents E. R. Ferguson, Jr., and John R. Pepper are individuals trading as The Berjon Company with their principal place of business located at 2074 Union Avenue, Memphis 4, Tennessee.

PAR. 2. Respondents E. R. Ferguson, Jr., and John R. Pepper are now, and for some time last past have been engaged in the sale of preparations containing ingredients which come within the classification of food and drugs as the terms "food" and "drugs" are defined in the Federal Trade Commission Act. One preparation is in liquid and the other in tablet form.

The designation used by said respondents for said preparation and the formulas thereof are as follows:

Designation: Pep-Ti-Kon.

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The formulas as set out on the labels are as follows:

Liquid Pep-Ti-Kon Formula

Each fluid ounce provides:

Ferrous Gluconate	14.0 Gr.
(Equivalent to 105.0 Mg. of Iron.)	
Vitamin B ₁ (Thiamine Hydrochloride)	3.0 Mg.
Vitamin B ₂ (Riboflavin)	3.0 Mg.
Niacinamide	10.0 Mg.
Manganese Citrate	0.5 Gr.
Zinc Chloride	0.07 Gr.

Tablet Pep-Ti-Kon Formula

Each three tablets provide:

Vitamin A. U.S.P.	7,500 Units
Vitamin D. U.S.P.	600 Units
Vitamin C (Ascorbic Acid) U.S.P.	75.0 mg.
Vitamin B ₁ Thiamine U.S.P.	3.0 mg.
Vitamin B ₂ Riboflavin U.S.P.	3.0 mg.
Vitamin B ₁₂ U.S.P.	3.0 mcg.
Niacinamide U.S.P.	30.0 mg.
Calcium	} 3.0 mg
Pantothenate	
Iron (Ferrous Sulfate Dried) U.S.P.	210.0 mg.

The directions for use of said preparations are as follows:

For liquid Pep-Ti-Kon:

Adults and children over 12 take one tablespoon just before or with each meal and at bedtime or as directed by a physician. Children 6 to 12 one-half the adult does or as directed by a physician.

For tablet Pep-Ti-Kon:

Adults or children over 6 years take one tablet three times daily, preferably with meals, or as directed by a physician.

PAR. 3. Respondents E. R. Ferguson, Jr., and John R. Pepper in the course and conduct of their business have caused their said preparations when sold, to be transported from their place of business in the State of Tennessee to purchasers located in various States of the United States. These respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said preparations in commerce among various States of the United States.

PAR. 4. Respondent Brick Muller and Associates is a corporation incorporated under the laws of the State of Tennessee with its office and principal place of business located in the Falls Building, Memphis, Tennessee. This respondent is an advertising agency and as such prepared and caused the dissemination of advertising matter on behalf of respondents E. R. Ferguson, Jr., and John R. Pepper, trading as The Berjon Company, for their aforesaid preparations.

PAR. 5. In the course and conduct of the aforesaid business, respondents have disseminated and caused the dissemination of advertisements concerning the aforesaid preparations by the United States mails and by various means in commerce, including but not limited to advertisements inserted in newspapers, by circulars and by radio continuities broadcast by stations with sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and respondents have disseminated and caused the dissemination of advertisements by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By and through the statements made in said advertisements respondents represent directly and by implication:

(1) That Pep-Ti-Kon will prevent or overcome the types of physical discomfort which are caused by summer heat and the lassitude experienced by certain individuals in spring.

(2) That bad teeth and false teeth cause an iron deficiency in all instances.

(3) That Pep-Ti-Kon, in addition to iron, supplies other essential minerals in the diet.

(4) That boils and pimples are caused by iron and vitamin deficiency and that the use of Pep-Ti-Kon is an effective treatment for these conditions.

(5) That loss of youth is due to iron deficiency.

PAR. 7. The advertisements containing the aforesaid statements were misleading in material respects and constituted "false advertisements" as the term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Pep-Ti-Kon will not prevent or remedy the types of physical discomfort which are caused by summer heat or the lassitude experienced by certain individuals in spring.

(2) Bad teeth and false teeth do not in all instances lead to the consumption of a diet which is deficient in iron.

(3) Pep-Ti-Kon supplies no established essential minerals in the diet other than iron.

(4) There is no casual connection between iron and vitamin deficiencies and boils and pimples, and Pep-Ti-Kon is not an effective treatment for boils and pimples.

(5) Iron deficiency does not cause loss of youth.

PAR. 8. The use by respondents of the above false advertisements, disseminated as aforesaid, has the tendency and capacity to mislead

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and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements made therein were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase Pep-Ti-Kon.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, 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.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations regarding a drug preparation. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the filing of an answer to the complaint is waived, and that the record on which the initial decision and the decision of the Commission disposing of this matter shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by statute for the orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondents E. R. Ferguson, Jr., and John R. Pepper are copartners trading as The Berjon Company, with their office and principal place of business located at 2074 Union Avenue, Memphis, Tennessee. Respondent Brick Muller and Associates is a corporation existing and doing business under and by virtue of the laws of the

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State of Tennessee, with its office and principal place of business located in the Falls Building, Memphis, Tennessee.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents E. R. Ferguson, Jr., and John R. Pepper, individually and as copartners trading as The Berjon Company, and respondent Brick Muller and Associates, a corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation Pep-Ti-Kon, whether sold under the same or any other name, or any other preparation of substantially similar composition or possessing substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Pep-Ti-Kon will prevent or overcome the discomforts caused by weather conditions or the lassitude experienced by some individuals in spring.
2. Bad teeth or false teeth cause, in all instances or in any percentage of instances contrary to established fact, the consumption of a diet which is deficient in iron.
3. Pep-Ti-Kon supplies essential minerals in the diet other than iron.
4. Boils or pimples are caused by iron or vitamin deficiencies or that Pep-Ti-Kon is an effective treatment for these conditions.
5. Loss of youth is due to iron deficiency.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of November, 1955, become the decision of the Commission; and, accordingly:

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.

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IN THE MATTER OF
AMERICAN BRAKE SHOE COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (a) OF THE CLAYTON ACT

Docket 6383. Complaint, June 29, 1955—Decision, Nov. 15, 1955

Consent order requiring the second largest bearing manufacturer in the industry—which, combined with the largest, accounted for more than 90% of that business—to cease violating Sec. 2(a) of the Clayton Act as amended through selling railroad car journal bearings at different prices in different trade areas from 1950 to 1954, and selling such bearings to a favored customer in the southeastern trade area (including the States of Virginia, North Carolina, Georgia, and Florida) at a lower price than that charged other customers in the same area, and which was below the cost of manufacture and sale during much of the years 1953 and 1954.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Peter J. Dias for the Commission.

Mr. Howard C. Buschman, Jr., of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 2 (a) of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, American Brake Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 230 Park Avenue, New York, N. Y.

The principal activities of the respondent are conducted through approximately ten divisions including the National Bearing Division which maintains headquarters at 4930 Manchester Avenue, St. Louis, Missouri, and manufacturing plants located in the same city; St. Paul, Minnesota; Niles, Ohio and Portsmouth, Virginia.

PAR. 2. Respondent corporation, through its divisions, is now and for many years has been engaged in the manufacture, sale and distribution of various metal products. Included among said products are railroad car journal bearings, hereinafter referred to as "bearings," manufactured by its National Bearing Division. Said bearings are manufactured according to designs and specifications set by the