

IN THE MATTER OF
KEDVALE PHARMACAL COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6544. Complaint, Apr. 30, 1956—Decision, Oct. 2, 1956

Consent order requiring Chicago distributors of a drug product designated "Sanforin", to cease advertising falsely that the preparation was a new discovery and an effective treatment and cure for all kinds of arthritis, rheumatism, and similar ailments, and the symptoms and pains thereof.

Mr. Harold A. Kennedy for the Commission.

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

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 30, 1956, charging them with having violated the Federal Trade Commission Act by making false and misleading representations concerning the therapeutic value of their drug products. After the issuance of the complaint, appearance by counsel, and filing of answer to said complaint, respondents entered into an agreement, dated July 19, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that respondents' answer to the complaint shall be considered as having been withdrawn, and the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Kedvale Pharmacal Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 5939 North Kedvale, Chicago, Illinois. Respondents Michael J. Reiser and M. J. Gleason are respectively the president and secretary-treasurer of said corporate respondent. Respondents Reiser and Gleason maintain their offices at the same address as the corporate respondent and formulate and control, now and at all times mentioned herein, the policies, activities, and practices of the said corporate respondent. Respondent Alvah T. Martin is vice president of said corporate respondent, with his office at 135 South LaSalle Street, Chicago, Illinois. Respondent Martin acted as legal counsel in organizing said corporate respondent but has had nothing to do with the formulation, direction, or control of the policies, practices, and acts of said corporate respondent now or at any time relevant herein. Accordingly, the complaint should be dismissed as to Alvah T. Martin.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, that respondent Kedvale Pharmacal Company, a corporation, and its officers, and respondents Michael J. Reiser and M. J. Gleason, individually and as officers of said corporation, their representatives, agents, and employees, directly or through any cor-

porate or other device in connection with the offering for sale, sale and distribution of the preparation "Sanforin", or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication that any such product:

- a. is a new discovery or is a new medicine;
- b. is an adequate, effective, or reliable treatment for any kind of arthritis, rheumatism, neuritis, bursitis, or sciatica;
- c. will arrest the progress of, correct the underlying causes of, or cure any kind of arthritis, rheumatism, neuritis, bursitis, or sciatica;
- d. is an adequate, effective, or reliable treatment for the symptoms or manifestations of arthritis, rheumatism, neuritis, bursitis, or sciatica, or will afford complete or long lasting relief from the pains thereof, or have any effect on the pain of these conditions in excess of the temporary relief of minor pain.

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

It is further ordered, That the complaint herein be, and the same is, dismissed as to Alvah T. Martin.

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 2nd day of October, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Kedvale Pharmacal Company, a corporation, and Michael J. Reiser, and M. J. Gleason, individually and as officers of said corporation, 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.

Very truly yours,
Federal Trade Commission
By _____, Secretary

Decision

IN THE MATTER OF
CARTER PRODUCTS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 4970. Complaint, May 28, 1943—Decision, Oct. 4, 1956

Order requiring distributors of "Carter's Little Liver Pills" laxative preparation to cease advertising falsely that their said preparation would restore regularity of bowel movement and was a cure and effective treatment for constipation and its symptoms; did not contain strong medicines and was unqualifiedly safe; was an effective treatment for sluggish liver functions; would make bile flow freely; would prevent and overcome discomforts caused by overeating and overindulgence in "good times"; would cause proper flow of the gastric and digestive juices, regulate the digestive system, induce a state of "bounce", vigor, and well-being, and was an effective treatment for "down-and-out" feelings generally; and to cease representing falsely that constipation poisoned the system, and using the word "Liver" in the brand name for said laxative.

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

Mr. Fletcher G. Cohn for the Commission.

Breed, Abbott & Morgan, of New York City, for respondents.

DECISION OF THE COMMISSION

STATEMENT OF THE CASE

This is a proceeding under the Federal Trade Commission Act wherein the Commission, on May 28, 1943, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the dissemination of false advertisements for inducing purchases of a preparation designated as "Carter's Little Liver Pills". After filing by the respondents of their joint answer to the complaint, testimony and other evidence in support of and in opposition to the charges of the complaint were introduced before a hearing examiner of the Commission, theretofore designated by it, and this proceeding came on for final hearing upon the record and the original and supplemental oral arguments of counsel. On March 28, 1951,¹ the Commission made its findings as to the facts and its conclusion drawn therefrom and issued its order directing the respondent, Carter Products, Inc., to cease and desist from the acts and practices found in the Commission's findings as to the facts to have been engaged in unlawfully by that respondent.

¹See 47 F.T.C. 1137.