

Decision

IN THE MATTER OF
DOLCIN CORPORATION, ET AL.MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 5692. Complaint, Aug. 18, 1949—Modified Order, Oct. 29, 1956

Order modifying the Commission's cease and desist order of Dec. 2, 1952, 49 F.T.C. 566—requiring respondent corporation and its officers to cease misrepresenting in advertising the therapeutic properties of its medicinal preparation "Dolcin"—to conform to the decree of the Court of Appeals of the District of Columbia of July 1, 1954.¹

Mr. Joseph Callaway and Mr. Daniel J. Murphy for the Commission.

Markel & Hill, of Washington, D.C., and *Mr. Sigmund Eisenstein*, of New York City, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 18, 1949, issued and subsequently served its complaint in this proceeding upon respondents Dolcin Corporation, a corporation, and Victor van der Linde, George Shimmerlik, and Albert T. Wantz, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, 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:

¹ Reported in 219 F. 2d 742, 5 S. & D. 646.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dolcin Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 683 Fifth Avenue, New York, New York.

Respondents Victor van der Linde, George Shimmerlik, and Albert T. Wantz, individuals, are now and at all times mentioned herein have been directors of said corporate respondent, and respectively, the president, treasurer, and secretary thereof, and with their offices located at the principal place of business thereof; and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the offering for sale, sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a certain medicinal preparation designated "Dolcin," which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains:

Calcium Succinate	-----	2.8 grains
Acetylsalicylic acid	-----	3.7 grains
Plus excipients.		

Directions for Use:

GENERAL DIRECTIONS

Read these directions CAREFULLY so that you may learn how you can get GREATEST BENEFIT from DOLCIN.

In cases of long-standing, where joint-stiffness and pain are acute before starting the DOLCIN Treatment, it is recommended that twelve DOLCIN Tablets be taken daily (3 tablets, 4 times, as explained above) for at least one week, and until the acute symptoms are relieved. Follow this with eight tablets daily for two or three months * * * and then four tablets a day for two months. *It is most important to continue taking DOLCIN for a few months after relief has been obtained*, for it is an established fact that Rheumatic activity usually persists in the body for considerable period after the acute symptoms have subsided.

Where stiffness of joints is not extreme and muscular pains are not severe * * * or where the case is not one of long standing * * * take eight DOLCIN Tablets daily for the first month (two tablets with a glass of water at each meal and two tablets before retiring for the night). After one month, reduce doses to four tablets daily (one tablet, four times a day) for three months. Then take two tablets daily (one morning, one night) for three months even though all symptoms have disappeared long before.

It makes no difference whether the DOLCIN at mealtime is taken before, during or after eating * * * BUT TAKE YOUR DOLCIN REGULARLY. * * *

Respondents cause the said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in 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 the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales of the drug preparation "Dolcin" in 1948 being in excess of one million dollars.

PAR. 3. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements of the drug preparation "Dolcin," for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase; and have disseminated and caused the dissemination of such advertisements for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said drug preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among such advertisements were radio broadcasts disseminated subsequent to October 7, 1948, by various broadcasting stations, and advertisements published in various professional and trade journals having national circulation and in various pamphlets and circulars distributed throughout the United States. Typical of the statements and representations contained in such advertisements are the following:

HERE IS WHAT YOU SHOULD DO ABOUT
YOUR ARTHRITIS AND RHEUMATISM—

1. *Get a bottle of DOLCIN* tablets and start your DOLCIN treatment at once.*

2. *What is DOLCIN?* It is a product which is the result of a new, scientific approach to the treatment of rheumatism and arthritis; it is a development of fundamental biochemical research.

DOLCIN# tablets contain ingredients which medical authorities accept as being correct in the treatment of symptoms of rheumatism and arthritis. DOLCIN is made under strictest laboratory control and is constantly tested for purity of ingredients and for pharmaceutic uniformity.

3. *What does DOLCIN do?* The DOLCIN treatment combines PROMPT RELIEF of pain, PHYSIOLOGICAL ACTION, freedom from ill-effects and LOW COST. Thus DOLCIN fills a long-sought objective in the therapy of the Rheumatic State. Rheumatism in its various forms * * * arthritis, myositis,

* Reg. U.S. Pat. Off.

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fibrositis and certain forms of bursitis, sciatica and neuritis * * * is, by far, the most prevalent and disabling of all chronic ailments. Rheumatism is not merely a disorder of joints and muscles, but is generally accompanied by disturbances in internal function (metabolism). It is, therefore, essential that treatment be directed not only toward relief of pain, but also to the disturbances in metabolism which constitute a very important part of the background of the Rheumatic State.

DOLCIN therapy not only provides PROMPT RELIEF from pain due to symptoms of rheumatism and arthritis, but DOLCIN contains catalysts which, extensive scientific research has recently proved, play a vital role in the metabolic processes which are disturbed in the Rheumatic and Arthritic State.

4. *I never heard of DOLCIN. How do I know it's good?* Up to a short time ago, DOLCIN was supplied only to hospitals, clinics and to doctors engaged in research and in private practice. Now, however, it is being sold direct to sufferers from rheumatism in all its forms. DOLCIN is becoming more widely-known every day as former victims of arthritic and rheumatic pains pass the good news along.

DOLCIN has been tested and proved to be efficacious and reliable; it is being used with success in great hospitals, clinics and prescribed by an increasing number of doctors.

5. *All right, but must I get a doctor to prescribe DOLCIN before I use it?* No. You do *not* need a doctor's prescription for you to take the DOLCIN treatment.

DOLCIN is NON-TOXIC. * * * it will *not* hurt the heart or any other organ. A study made in a university famous all over the world confirms extensive earlier clinical proof that DOLCIN is NON-TOXIC.

DOLCIN is designed for PROMPT ACTION. The LACK OF HARMFUL EFFECTS makes DOLCIN ideal for prolonged administration such as is frequently necessary in chronic and severe cases of rheumatism and arthritis. This freedom from hazard and its effectiveness are IMPORTANT ADVANTAGES of DOLCIN over some medications which are considerably more expensive and which may have harmful effects on the body on prolonged administration.

6. *Is DOLCIN suitable for use by people who are adversely affected by acetyl-salicylic acid (aspirin)?* DOLCIN'S ingredients, combined in proper proportions, enhance the good effects of each while, at the same time, they minimize aspirin's sometimes-harmful effects.

Remember, DOLCIN is NON-TOXIC * * * it will *not* harm the heart or any other organ.

7. *Is DOLCIN just another palliative * * * a product for relieving pain for a few hours?* The answer is very definitely that DOLCIN is *not* just a palliative masking pain and discomfort for a few hours. DOLCIN is designed to RELIEVE PAIN PROMPTLY but, also, the DOLCIN treatment is directed to the disturbances in metabolism which are a very important part of the background of the Rheumatic State, and is designed to give prolonged relief from symptoms.

8. *How long will it take to relieve pain and for symptoms of arthritis and rheumatism to disappear?* No two cases respond exactly alike. Generally speaking, the longer the person has suffered from the disease the longer it will take to get results. We know of many cases, where the pain was severe but where the symptoms had only been of few months' standing, in which all pain disappeared in a few hours, other cases take longer.

9. *For how long should I take DOLCIN?* As carefully explained in the directions packed with each bottle, it is most important to continue taking a few DOLCIN tablets every day for a few months after the pain and other symptoms have disappeared; this is to help prevent any recurrence, by giving the body time to get ride of disturbances in internal function which accompany the disease.

10. *How much DOLCIN shall I take?* With every bottle there is a sheet of information and Directions. Study this thoroughly. Remember, because DOLCIN is non-toxic, it is better to take more tablets than necessary rather than fewer * * * and much better to continue the treatment for some time after *all* symptoms have disappeared. You don't want your pains and stiffness back again, do you?

11. *Is DOLCIN of help for children's so-called "growing-pains"?* Yes. Growing-pains in children are often of rheumatic origin and may precede childhood's scourge, RHEUMATIC FEVER! Any child suffering from growing-pains should be given the DOLCIN treatment at once, under a doctor's supervision.

12. *Should other treatments be used while I am taking the DOLCIN treatment?* Unless prescribed by a physician, no other medication should be, or need be, taken. Leave it to DOLCIN and Nature. Take DOLCIN regularly and give it time to work. Of course, it is natural that a case of arthritis or rheumatism which has taken years to develop cannot be relieved overnight!

13. *My doctor does not know about DOLCIN. How can he learn about it?* If you will send us his name and address, we will gladly send him full scientific data on DOLCIN.

14. *Where can I get DOLCIN?* Ask your druggist. If he has not got it in stock, order DOLCIN direct from us * * * sending your druggist's name and address, please.

15. *What does DOLCIN cost?* The most economical size is the DOLCIN-500 * * * 500 tablets last the average case more than *THREE MONTHS!* * * * Price \$9.00.

DOLCIN-100 * * * 100 tablets for only \$2.00.

When you send remittance with your order, we prepay postage and insurance on the shipment.

16. DOLCIN is a tested, honest product * * * non-toxic * * * inexpensive * * * used in hospitals * * * prescribed by doctors. Many, many people are no longer suffering the pain and stiffness of arthritis or rheumatism * * * through taking DOLCIN * * * efficacious, reliable DOLCIN which is the *best friend of arthritics and rheumatics.*

Sometimes just a word—spoken at the right time—can alter the whole course of another person's life. Right now, here is such a word for *you*—If you suffer from arthritis or rheumatism—and that word is DOLCIN! DOLCIN is a tested new bio-chemical discovery—which many, many people throughout the country report brings swift, effective relief from the agony of arthritic and rheumatic symptoms. People who have suffered from these afflictions *for years*, report they have resumed normal occupations after taking DOLCIN. There's a scientific explanation for this. DOLCIN is more than just a pain killer—in many cases, DOLCIN actually results in prolonged remission of stiffness and discomfort. * * *

* * * many victims of these diseases have been able to resume normal living by taking DOLCIN. It's used in many hospitals * * * prescribed by many doctors * * * and is designed to bring you sufferers of arthritis, rheumatism,

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neuritis and sciatica NOT temporary relief * * * but prolonged relief. * * *

As acetylsalicylic acid in DOLCIN is non-toxic, DOLCIN should be used instead of aspirin.

DOLCIN is an efficacious, non-toxic and economic preparation for oral administration in relieving symptoms of arthritic and rheumatic disorders. DOLCIN * * * resulting from a new physiological approach in the therapy of arthritic and rheumatic disorders * * * combines the catalytic effect of calcium succinate and acetylsalicylic acid in non-toxic form which may be prescribed for osteoarthritis, infectious arthritis and rheumatoid arthritis as well as for rheumatic fever and various forms of neuritis and sciatica. DOLCIN may be employed as an adjuvant to other therapeutic measures.

* * * Remember the name DOLCIN—D-O-L-C-I-N—for relief of symptoms of arthritis, rheumatism, lumbago and neuritis.

PAR. 4. Through the above-quoted advertisements, and others similar thereto, respondents have represented, directly or by implication, as follows:

1. That the drug preparation "Dolcin" constitutes an adequate, effective and reliable treatment for, will arrest the progress, correct the underlying causes, cure and prevent the recurrence of rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis and all other forms of rheumatism and arthritis and the symptoms and manifestations thereof;

2. That the drug preparation "Dolcin" is inexpensive, in that it is "economical" to purchase and of "low cost";

3. That the drug preparation "Dolcin" constitutes an adequate, effective and reliable treatment for so-called "growing-pains" in children, and that its use will prevent rheumatic fever, which may be preceded by such pains;

4. That the drug preparation "Dolcin" is non-toxic; that it can be used over prolonged periods of time without harmful effects on the body; that aspirin does sometimes produce harmful effects; and that persons adversely affected by aspirin can take "Dolcin" with safety.

PAR. 5. The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions including, among others, rheumatic fever, fibrosis, myositis, neuritis, sciatica, lumbago, and bursitis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body. These pathological conditions are of known as well as unknown origin. Examples of those of unknown origin are rheumatoid arthritis, osteomyelitis and rheumatic fever. Examples of such conditions of known causes are infectious arthritis, such as arthritis of syphilis, arthritis of gonorrhea, and arthritis associated with pneumonia and

tubercular infections. In addition there are forms of arthritis, such as gout, which are connected with disturbances of metabolism.

Rheumatic fever is an inflammatory disease of unknown cause, of which the most common manifestations are fever, pain, and swelling and inflammation in the joints, often accompanied by rapid heartbeat, profuse sweating, increase in white corpuscles and other changes in the blood. Rheumatic fever tends to be complicated, and is the chief cause of death from heart disease in children between the ages of 5 and 19. Although "growing-pains" in children may be symptomatic of the early stages of rheumatic fever, they also may be due to many other and less serious causes, such as playing too hard and running too much, and do not constitute a disease.

Fibrositis is an irritation or discomfort, a syndrome of pain and stiffness which arises in the fibrous tissues of the body.

The term "myositis" is used generally by doctors and laymen to refer to the condition of muscular rheumatism or fibrositis. It is of varying severity, sometimes mild and localized, sometimes severe and widespread.

The term "neuritis" is a general term referring to an inflammation of the nerves, and denotes many different diseases resulting from various causes, such as infections, pressures on nerves from displaced organs or structures of the body, invasion of the nerve by neoplasm or tumor, intoxication with metals or toxins, and metabolic disturbances such as the form of neuritis occurring in diabetes.

Sciatica is a common form of neuritis felt along the course of the sciatic nerve. It is not a disease, but may occur as a symptom of many different diseases resulting from various causes, such as pressure on the sciatic nerve, a tumor in the spine, infection or inflammation of the sheath of the sciatic nerve, metabolic disturbances caused by toxins resulting from infection, fibrositis or arthritis involving the joints.

Lumbago is a form of fibrositis manifesting itself as a painful condition in the lower part of the back, of varying severity, sometimes so mild as hardly to interfere with a man's business, in other instances so violent as to render him unable to move in bed. Lumbago is associated with stiffness and muscle spasm provoked by attempts to move.

Bursitis is a form of fibrositis having specific reference to inflammation of a bursa, the fibrous sac or membrane surrounding a joint, and may result from invasion of the bursa by various germs, such as streptococcus, mycobacterium, gonococcus, and the tubercular bacillus, and from rheumatic or fibrositic inflammation.

Infectious arthritis is a form of arthritis resulting from invasion of a joint of any one of various germs, such as staphylococcus and

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streptococcus, which are carried to the joint through the bloodstream from a focus in infection in the body, caused by an external wound or by various infectious diseases.

Osteoarthritis refers to a disease characterized by degenerative changes in the joints and other tissues and organs of the body. The clinical phenomena associated with osteoarthritis are pain, painful stiffness associated with movement of the joint, enlargement of some joints, narrowing of joint spaces, increase in size of joint surfaces, growth of spurs and increase in the extent of margins of the joint.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

PAR. 6. The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

PAR. 7. An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; and medication. Delay of proper diagnosis, with consequent failure to administer appropriate treatment, may result in the evolution of irreversible pathological changes, causing a crippled, useless joint or extremity, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

PAR. 8. The drug preparation "Dolcin" contains 2.8 grains of calcium succinate and 3.7 grains of acetylsalicylic acid, plus excipients of no therapeutic significance.

Calcium succinate, when taken orally, is converted by the liver into sugar, and no significant amount of succinate reaches the bloodstream. In order to be therapeutically operative in the body, succinates must be administered intravenously. When present in sufficient concentration to be operative, the effect of succinates on tissue metabolism is harmful. The quantity of calcium succinate contained in the drug preparation "Dolcin" is entirely too small to achieve or maintain a sufficient concentration in the body to have any effect whatever on the metabolism of the tissues.

Since calcium succinate, administered orally, is therapeutically inoperative, the only active ingredient contained in the drug preparation "Dolcin" is acetylsalicylic acid, commonly known as aspirin, the use and effect of which, as an analgesic and antipyretic, have been known for many years.

The drug preparation "Dolcin" contains acetylsalicylic acid in an amount insufficient to relieve the severe aches, pains and discomforts attendant upon arthritic and rheumatic conditions. The quantity of acetylsalicylic acid therein contained may, however, function as an analgesic and antipyretic to a sufficient extent to afford temporary relief to the minor aches and pains accompanying arthritis and rheumatism.

PAR. 9. The drug preparation "Dolcin," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including, among others, rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, and bursitis, nor will

said preparation arrest the progress, correct the underlying causes, or effect a cure of any of such conditions. The drug preparation "Dolcin," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Dolcin," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary relief of only minor aches, pains and discomforts. With the exception of such temporary relief, the drug preparation "Dolcin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including, among others, rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago and bursitis.

The drug preparation "Dolcin," however taken, will not correct disturbances in metabolism nor insure adequate functioning of the metabolic processes of the body.

PAR. 10. The drug preparation "Dolcin," however taken, does not constitute an adequate, effective, or reliable treatment for so-called "growing-pains" in children, nor will its use prevent rheumatic fever.

PAR. 11. Since the only therapeutically operative ingredient in the drug preparation "Dolcin" is acetylsalicylic acid, commonly known as aspirin, and since, under certain circumstances, or when taken over prolonged periods of time, aspirin may produce harmful effects upon the body, the drug preparation "Dolcin" may be toxic to the same extent, and cannot be taken over prolonged periods of time without the danger of such harmful effects, nor can such preparation be taken safely by persons adversely affected by aspirin.

PAR. 12. Since the only therapeutically operative ingredient in the drug preparation "Dolcin" is acetylsalicylic acid, commonly known as aspirin, and since the retail selling price, without prescription, of 100 tablets of the drug preparation "Dolcin" is \$2.00, whereas that of 100 tablets of a well-known brand of aspirin is 59¢, while many other brands of aspirin sell for less, the drug preparation "Dolcin" is not economical, inexpensive, or of low cost.

PAR. 13. The record contains no substantial evidence to support the allegation that the administration of the drug preparation "Dolcin" over prolonged periods of time to persons suffering from rheumatic fever may result in serious hemorrhage and in death.

PAR. 14. Respondents' representations concerning the drug preparation "Dolcin," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of

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the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

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

ORDER

It is ordered, That the respondents Dolcin Corporation, a corporation, and Victor van der Linde, George Shimmerlik, and Albert T. Wantz, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Dolcin," 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:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford significant relief of severe aches, pains, and discomforts or permanent relief of any aches, pains and discomforts of rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording relief of aches, pains, or fever within the foregoing limits;

(d) that the taking of said preparation is an adequate, effective,

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or reliable treatment for so-called "growing-pains" in children, or that its use will prevent rheumatic fever;

(e) that said preparation may safely be taken over prolonged periods of time;

(f) that said preparation may safely be taken by persons adversely affected by aspirin; and

(g) that said preparation is economical, inexpensive, or of low cost, unless and until the retail selling price, without prescription, of such preparation shall, in truth and in fact, be less than the retail selling price, without prescription, of the only active ingredient contained in said preparation, which is acetylsalicylic acid, commonly known as aspirin.

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 said preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

OPINION OF THE COMMISSION

By the Commission:

After hearing this proceeding on its merits, the Commission on December 2, 1952, rendered its decision in which it held that the respondents had engaged in false and misleading advertising, in respects there designated, for promoting sales in commerce of Dolcin for use by the public in the treatment of arthritis and related disorders. On petition for review by the respondents to the United States Court of Appeals for the District of Columbia Circuit, that Court in its order dated July 1, 1954, modified Paragraph 1(c) of the Commission's order to cease and desist and, as thus modified, enforced the same and commanded the respondents to obey the terms of said order; the Court's opinion further directed, however, that additional material evidence there referred to be taken before the Commission. *Dolcin Corporation, et al. v. F.T.C.*, 219 F. 2d 742, 750. (Petition by respondents for writ of certiorari denied 348 U.S. 981). Thereafter, the Commission reopened and remanded the matter to the hearing examiner for the purpose of taking competent and material evidence relating to clinical tests and surveys respecting the efficacy of the Dolcin formula as might be offered by the respondents in conformity with Section IV of the Court's opinion.

A hearing was held in which evidence was received as to the manner in which a mail survey was conducted among physicians invited to use the respondents' preparation and to fill out a question-

naire relating to their observations in respect thereto. Objections to reception of the survey results in evidence were interposed by counsel supporting the complaint on various grounds, including possible mistakes in interpretation of the questions propounded for the doctors' answers and other matters assertedly detracting from the conclusiveness or trustworthiness of the survey results. Those objections were sustained by the hearing examiner and the survey data were accordingly excluded. At a second hearing, the respondents offered the testimony of a physician relating to his clinical use of the Dolcin formula on two selected groups of patients. While his cross-examination was in progress, respondents' counsel requested permission to withdraw the witness and moved that his testimony be stricken from the record. That motion was duly granted. Counsel for the respondents subsequently notified the hearing examiner that the respondents had elected to abandon further proceedings and requested that the record be closed, which request likewise was granted.

On May 23, 1956, the hearing examiner filed a report in which he expressed the view that the evidence presented by the respondents in the supplemental hearings afforded no basis for changes in the Commission's prior decision of December 2, 1952; and he recommended that its prior decision be reaffirmed by the Commission. Briefs in opposition to the recommendations contained in the hearing examiner's report have been filed and the Commission has heard the oral arguments of counsel.

Paragraph 1(d) of the order forbids representations that the preparation is an effective treatment for growing pains in children or that its use will prevent rheumatic fever. Our striking of this proscription is requested by respondents on the ground that the advertising representation which was the target of this proscription was voluntarily discontinued by the respondents approximately two months prior to the date on which the Commission issued its complaint. The bare abandonment of an advertising statement before the issuance of complaint does not, standing alone, provide a valid ground for dismissal. We are of the view that elimination of this provision from the order would not be in the public interest. Similar principles are controlling in evaluating the merits of respondents' request for deletion of paragraph (a) of the order to cease and desist, and such request is likewise denied.

Paragraphs 1(e) and 1(f) require the respondents to cease representing that their preparation may be safely taken over prolonged periods of time or taken safely by persons adversely affected by aspirin. The effect of these provisions is limited to forbidding

affirmative representations that use of the respondents' preparation is safe under circumstances in which it is not free from adverse effects. Expressing concern lest these prohibitions place the company at a disadvantage in defending against claims for alleged personal injuries, the respondents request that the Commission's order be modified by a proviso expressly stating that its proscriptions are binding upon the respondents only in this proceeding or in any other proceeding in which the Federal Trade Commission is a party. The order contained in the Commission's decision was issued, however, pursuant to its statutory mandate to prevent the dissemination of false and misleading advertising. Questions relating to the evidentiary status in private litigation of official documents of the Commission are not matters to be resolved by it but constitute legal issues peculiarly within the purview of courts encharged with the trial of such litigation. The Commission is of the view that no valid reasons have been shown by the respondents warranting modification in any manner of Paragraphs 1(e) or 1(f).

We likewise are rejecting the respondents' contentions that Paragraph 1(g) is erroneous. This prohibition, in effect, forbids respondents from representing that their product is economical when its retail price exceeds that for aspirin, its sole active ingredient, when sold without prescription. It seems obvious that Dolcin can not be truthfully advertised as inexpensive when everything of value contained in it can be obtained through ordinary means with which the public is familiar by paying 59¢ for aspirin as compared with \$2.00 for a similar quantity of Dolcin.

Reverting to Paragraph 1(c) of the order to cease and desist, the respondents state in opposition to its proscriptions (both in its original form and as modified by the Court) that certain non-record matters referred to in the briefs indicate that Dolcin's therapeutic value exceeds that recognized in the Commission's decision, and serve to render inconclusive and incomplete such competent and material evidence as was received into the record during the original proceedings. In these connections respondents call attention, among other matters, to statements appearing in a medical journal with reference to benefits afforded by the salicylate drugs generally and to other matters purporting to show the value of Dolcin in particular, including scientific articles concerning clinical studies separately conducted by Drs. Szucs, Brusch, and Gilpin. These and other non-record matters, including the excluded survey data previously referred to, are proffered in the briefs for our considerations and respondents urge us to conclude that the relief from pain afforded

by Dolcin extends to severe pains and that its benefits are more than temporary.

One of the above-mentioned articles reporting on Dolcin's clinical use, namely, that bearing the name of Dr. Gilpin, was received into the record at the second supplemental hearing when he testified. Inasmuch as all his testimony in respect thereto subsequently was stricken at the respondents' request, that exhibit also is in the non-record category. That the respondents elected to request the exclusion of that testimony attests to its essential lack of probative value. The physicians who conducted the other two studies were not offered as witnesses and there is no valid basis for us to assume the scientific conclusiveness of those studies. The record in fact contains suggestions to the contrary inasmuch as one of the briefs filed on behalf of the respondents indicates that Dr. Szucs has stated, albeit erroneously in respondents' view, that he abandoned use of the Dolcin formula very early in the course of his reported experiment.

We think, furthermore, that the hearing examiner's ruling excluding the survey data was based on valid grounds. The evidentiary record before the Commission is, therefore, essentially the same as that on which the Commission's original decision was based. Considerations of sound public policy as well as principles of substantive law require that the Commission's decisions in adversary proceedings be based on the transcripts and exhibits duly received into the record, and we decline to consider the respondents' evidentiary proffers. The record in this proceeding is fully adequate for informed determinations with respect to the therapeutic limitations of the respondents' preparation. Since the findings as to the facts contained in the Commission's original decision are in accord with the greater weight of the record, the respondents' request that Paragraph 1(c) be deleted has no merit.

A supplemental brief filed by the corporate respondent's general counsel contains an alternative request that Paragraph 1(c) of the Commission's order to cease and desist be conformed to the decree dated July 1, 1954, of the Court of Appeals. Subsequent to that decision, the Supreme Court rendered its decision in *Rhodes Pharmacal Co., Inc., et al. v. F.T.C.*, 348 U.S. 940, wherein it sanctioned an order similar in principle to Paragraph 1(c) in its original form. This circumstance notwithstanding, the Commission is of the opinion that the present posture of this case warrants that the Commission accede to the respondents' foregoing request. Our order herein accordingly provides for such modification, but the Commission's action in this regard is without prejudice to exercise of its privilege to hereafter request the Court of Appeals for modification of Para-

Order

53 F.T.C.

graph 1(c) of the order to cease and desist contained in the Commission's decision as now modified.

Commissioner Mason did not participate in the decision of this matter.

ORDER RULING ON RESPONDENTS' OBJECTIONS TO HEARING EXAMINER'S
REPORT OF MAY 22, 1956, AND REAFFIRMING THE COMMISSION'S DECISION
AS MODIFIED

This proceeding having been reopened by the Commission and remanded to the hearing examiner for the reception of additional evidence and the matter having come on to be heard by the Commission upon the report filed thereon by the hearing examiner in which he recommended that the Commission's decision of December 2, 1952, be reaffirmed by it, and upon the briefs filed in opposition to such report, and the oral arguments of counsel; and

The Commission having determined that the request contained in the Supplement to Main Brief, which was filed by the general counsel of the respondent corporation in the course of his oral argument, that Paragraph 1(c) of the order to cease and desist be modified to conform to the decree of July 1, 1954, of the United States Court of Appeals for the District of Columbia Circuit should be granted; and the Commission having further determined, for reasons stated in the opinion which accompanies this order, that the respondents' additional requests for modification of the Commission's findings as to the facts and order to cease and desist herein should be denied:

It is ordered, That Paragraph 1(c) of the order to cease and desist contained in the Commission's decision of December 2, 1952, be, and the same hereby is, modified to read as follows:

that said preparation will afford significant relief of severe aches, pains and discomforts or permanent relief of any aches, pains and discomforts of rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording relief of aches, pains or fever within the foregoing limits.

It is further ordered, That the respondents' requests in all additional respects for modification of said decision be, and the same hereby are, denied.

It is further ordered, That the Commission's decision of December 2, 1952, as hereinbefore modified be, and it hereby is, reaffirmed as the decision of the Commission.

Commissioner Mason not participating.

Complaint

IN THE MATTER OF
O'CEDAR CORPORATIONORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (d)
AND 2 (e) OF THE CLAYTON ACT*Docket 6552. Complaint, May 11, 1956—Decision, Oct. 31, 1956*

Consent order requiring a Chicago corporation, one of the largest manufacturers in the United States of mops, waxes, polishes, and related products, to cease violating Secs. 2 (d) and (e) of the Clayton Act, through paying certain customers for, and furnishing to certain customers, services of sales persons who acted as demonstrators of its products, while not making such payments or services available on proportionally equal terms to all their competitors.

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

Mr. Frederick McManus for the Commission.

Norman, Engelhardt, Zimmerman & Prince, by *Mr. Harold W. Norman*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that O'Cedar Corporation, a corporation, hereinafter more particularly designated and described, has violated the provisions of subsection (d) and subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 15) hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. O'Cedar Corporation is a corporation, organized, 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 2246 West 49th Street, Chicago, Illinois.

PAR. 2. From 1941 to the present time, which is the period covered by the allegations of this complaint, respondent has been engaged in the business of manufacturing and selling mops and various types of waxes and polishes, together with other related products. Respondent is one of the three or four largest companies engaged in that business in the United States. Respondent manufactures its products at its place of business in Chicago, Illinois, and sells such products to purchasers, including department stores, located in all of the various states of the United States for resale within such places.