

IN THE MATTER OF
THE BROTHERHOOD OF GOOD SAMARITANS
TO VICTIMS OF ARTHRITIS

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

Docket 6092. Complaint, Apr. 14, 1953¹—Decision, Nov. 17, 1956

Order requiring Atlantic City, N.J., distributors of untreated alfalfa seed and vitamin tablets composed of alfalfa leaf meal under the designation of "Al-Fal-Fay Seed and Vitamin Health Food" to cease advertising falsely in newspapers, periodicals, etc., that said products constituted an effective treatment for and would cure arthritis; would relieve the pains and discomforts due thereto; and would prevent recurrence of attacks.

Mr. Michael J. Vitale for the Commission.

Lesser, Goding & Nappo by *Mr. James B. Goding*, of Washington, D.C., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration of the complaint, as amended, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings as to the facts and conclusions submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises makes the following findings as to the facts and conclusions drawn therefrom and order:

1. Respondent The Brotherhood of Good Samaritans to Victims of Arthritis is a New Jersey corporation located at 2305 Kuehnle Avenue, Atlantic City, New Jersey. Respondent U. G. Robinson located at the same address is an individual and is president of corporate respondent and directs and controls the advertising, sales activities and policies of said corporate respondent with respect to the acts and practices hereinafter set forth.

2. For several years last past the respondents have been engaged in the sale and distribution in interstate commerce of untreated alfalfa seed and vitamin tablets composed of alfalfa leaf meal under the designation of "Al-Fal-Fay Seed and Vitamin Health Food," which are recommended by them for treatment of arthritis.

¹ Amended Apr. 25, 1955.

3. In the course and conduct of their business as aforesaid, the respondents have disseminated advertisements concerning their said products "Al-Fal-Fay Seed and Vitamin Health Food," by United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products, and respondents have also disseminated advertisements concerning said "Al-Fal-Fay Seed and Vitamin Health Food," by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the advertising disseminated by respondents it was represented, directly and by implication, that the use of their products "Al-Fal-Fay Seed and Vitamin Health Food" constitute an effective treatment for and will cure arthritis, and that the use of said preparations will relieve the aches, pains and discomforts due to arthritis and will prevent the recurrence of attacks of arthritis.

5. There are many kinds of arthritis of which rheumatoid arthritis and osteo-arthritis are the most common. Rheumatoid arthritis is an inflammatory type of arthritis which involves the joints specifically, but may affect the entire body as well. The inflammation of the tissues about the joint can expand and grow into the joint space and destroy the cartilage, destroying the motion in the joint. Osteo-arthritis is not an inflammatory disease, but is a prematurely aging and wearing within the joint. It is due primarily to the wear and tear on the weight bearing joints of the body that are used most, principally the knees, hands and hips. This is a continuous slow and insidious degenerative process in which the cartilage or covering of the bone is slowly eroded with bone rubbing against bone, causing disability and discomfort. The symptoms of rheumatoid arthritis are characterized by pain with stiffness, swelling and aching, pain on motion of the involved joints, oftentimes weakness, fatigue and inability to use the joint properly. The symptoms of osteo-arthritis usually produce pain only on weight bearing or definite use of joint.

6. It is characteristic of rheumatoid arthritis that it will undergo spontaneous remissions from time to time, during which the manifestations of this condition and particularly the symptoms of pain disappear. Any case of rheumatoid arthritis, if left alone and not treated in any manner will be subject to remissions and exacerbations, that is to say, the case will progress for a varying period and then of its own accord will subside to recur later with

increased activity. This improvement which occurs at certain times is called spontaneous remission. There is also a condition known as burned out rheumatoid arthritis where there has been activity with the damaging of certain joints, the activity then subsides, but the chronic damage and deformity of the joints remains but with the absence of pain.

7. In support of the charges of the complaint that the representations disseminated by the respondents were false, five well-qualified specialists in the field of arthritis and rheumatism testified in this proceeding:

(a) Dr. Richard T. Smith, Chief of Arthritis Clinic, Jefferson Medical College and Hospital, and Chief of the Arthritis Clinic at Pennsylvania Hospital, both in Philadelphia, Pennsylvania.

(b) Dr. Dominic Anthony Donio, Director of the Arthritis Clinic at Sacred Heart Hospital, Allentown, Pennsylvania.

(c) Dr. Darrell C. Crain, Director of the Rheumatology Clinic of Georgetown University Hospital, and consultant in arthritis and rheumatic diseases at Georgetown University Hospital, District of Columbia General Hospital, Walter Reed Hospital and National Institute of Health, and Chief of rheumatic diseases at Doctors Hospital and Garfield Hospital.

(d) Dr. Herman H. Tillis, Chief of Arthritis Department at Newark Presbyterian and Beth Israel Hospital, and Clinical Assistant of rheumatic diseases at New York University.

(e) Dr. Otto Steinbrocker, Specialist in Rheumatology, Assistant Professor of Clinical Medicine, New York University Post-Graduate Medical School, and affiliated with Bellevue Hospital, Lenox Hill Hospital and Hospital for Joint Diseases.

These physicians testified as experts and also testified as to certain clinical studies made by administering respondents' alfalfa seed and tablets to patients suffering from various forms of arthritis. The respondents introduced no expert testimony, but instead relied upon the testimony of three users of respondents' preparation, who claimed to have obtained varying degrees of help from its use. The physicians, who attended these patients, testified that their conditions had been diagnosed as some form of rheumatoid arthritis.

8. The first of these expert witnesses, Dr. Richard T. Smith, conducted a clinical study using respondents' alfalfa seed and tablets on eighteen regular patients at Benjamin Franklin Clinic in Philadelphia. Five of these patients had osteo-arthritis and thirteen had rheumatoid arthritis. It is the opinion of this witness that this study made under his supervision, using alfalfa seed and tablets gave no evidence that it would cure any type of arthritis or rheu-

matism or that it could be expected to relieve the aches and pains of rheumatism, but instead there was evidence that arthritis actually became worse while the study was going on, indicating that the product had no therapeutic value in the treatment or prevention of arthritis.

9. Dr. Darrell C. Crain conducted and supervised a clinical study at Georgetown University Hospital, Washington, D. C., using respondents' alfalfa seed and tablets on sixteen patients who were suffering from rheumatoid arthritis, thirteen of whom completed the study. These patients were graded by using therapeutic criteria recommended by the American Rheumatism Association and were graded 1, 2, 3 or 4, depending upon the response to medication. Grade 1 indicates complete remission; grade 2 indicates major improvement; grade 3, minor improvement; and grade 4, no improvement whatsoever. Of the thirteen patients who took the medicine three months or longer, eight had a grade 4 response to the therapy, showing no improvement or growing worse; two showed grade 3, or slight improvement; and three showed a grade 2 improvement as moderate or marked. There was no reversal or pathological changes in the bone which had been observed, but in the case of the grade 2 patients there was a lessening of the inflammatory reaction, permitting some increased mobility of the joints at the end of the test. Dr. Crain gave the following observations as to the patients showing slight to moderate improvement:

(a) The patient designated as V.A., showing a grade 3 or slight improvement during the test, had been a patient at the hospital for approximately 5 years and had been subject to fluctuations throughout the entire period. The periods of improvement, as noted under the alfalfa study, were never any better from the pain and disability standpoint than they had been previously under other conditions. The sedimentation rate remained high during the entire period, indicating that the chances of any significant improvement occurring is very little.

(b) The chart of disability of the second patient, designated as L.R., having a grade 3 response shows very little change. The patient had periods of being better and worse during administration, and there was no significant change in the sedimentation rate.

(c) The patient, designated as E.H., showing a grade 2 improvement had pain which varied a great deal during the time she was using the product. At the beginning of the study this patient had signs of swelling and redness in some joints. The redness practically disappeared, then recurred for a short time, and then got better at the end of the test. There was less inflammation than at

the beginning, but at the end of the study the inflammation was more than it had been at various periods prior to using respondents' product.

(d) The second patient, designated as J.G., showing a grade 2 improvement, was one who usually came to the clinic when feeling bad, and when feeling good would not appear for periods sometimes as high as six months. Although he was given a grade 2, because of a lessening of disability, it is of significance that during the entire time of the study this man's joints continued to show signs of inflammation, even though he said he was able to get around somewhat better.

(e) The previous history of the third patient, designated as C.S., who showed a grade 2 improvement, indicated that she could get along as well, if not better, while taking no drugs.

Dr. Crain further testified that from his experience approximately 40 percent of the patients will show an improvement under rest and general diet alone, without any specific medication. It was the opinion of this witness that the clinical study indicated that the improvement in certain of the patients was no more than would be expected if the same group were not receiving any medication, and was hardly more than would be expected from coincidence and chance, and that the study gave no indication that respondents' alfalfa seed and tablets would be of any value in the treatment of arthritis.

10. Dr. Dominic Anthony Donio conducted a clinical test using dehydrated alfalfa leaf meal in capsule form, bearing the trade name Arthalfa, which is the same product used by the respondent in tablet form. In making this study, Dr. Donio selected twenty patients who had been diagnosed as having rheumatoid arthritis. Fourteen of these patients continued with the study for a minimum of ten weeks. The results of this study showed that there was no value in alfalfa meal in the treatment of rheumatoid arthritis.

11. Dr. Herman H. Tillis gave a concentrated powder of alfalfa seed to a number of patients, but was unable to see any major or minor benefits and gave up the treatment.

12. Dr. Otto Steinbrocker made a clinical study on twelve patients suffering from osteo-arthritis and rheumatoid arthritis. One patient dropped out at the end of 1 week and the remainder continued for from 2 to 7 months. Results of the study were negative—the administration of respondents' preparation did not make any favorable impression in the screening tests.

13. In opposition to the charges of the complaint, the respondents introduced the testimony of three users of their products:

(a) Mary Anna Dixon, who at the time of her appearance was lame and had some difficulty in walking, claimed to have been cured to the extent of having no pain since beginning to take respondents' alfalfa seed. She admitted a present stiffness in the knee. Her attendant physician testified that he had diagnosed her case as multi-articular arthritis, that she had a multi-joint involvement in a migrating fashion.

(b) Catharine D. Hawkiner, who at the time of her appearance was confined to a wheel chair and had very little movement in either legs, arms or body, testified that after taking respondents' alfalfa seed and tablets the symptoms of pain had subsided and had gradually disappeared, although inability of locomotion remained the same. Her condition, as shown by hospital records, was diagnosed as rheumatoid arthritis, muscular atrophy and ankylosis of the joints.

(c) Hermance Burgedorf, who testified that in using respondents' alfalfa seed her method was to cook the seed as directed, drink two teaspoonfuls of the liquor three times a day, and throw the seed away. Later changed to respondents' capsules or tablets. This witness testified that after taking this product pain and stiffness gradually disappeared. The attending physician of this witness diagnosed her condition as rheumatoid arthritis and stated that she would go several months without an attack and be very comfortable.

14. The expert testimony in this proceeding is overwhelming to the effect that respondents' alfalfa seed and tablets have no therapeutic value in the treatment of arthritis. The three lay witnesses were apparently honest in their convictions, but undoubtedly belong to that great army of arthritis sufferers who, because of remissions from time to time, become convinced that the treatment which is being undertaken at the time is the immediate cause of betterment rather than spontaneous remission or perhaps a burned out arthritic condition.

CONCLUSIONS

1. The advertisements disseminated by the respondents as herein found are misleading in material respects and constitute false advertisements, as that term is defined in the Federal Trade Commission Act.

2. The use by the respondents of said advertisements containing materially misleading statements and misrepresentations has had, and now has, the tendency and capacity to mislead substantial numbers of the purchasing public into the erroneous belief that such statements and representations are true, and to induce the purchase

of substantial quantities of said preparation, because of said erroneous belief.

3. 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 intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents The Brotherhood of Good Samaritans to Victims of Arthritis, a corporation, and its officers, and U. G. Robinson, an individual, and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of the products designated "Al-Fal-Fay Seed and Vitamin Health Food," or any other product of substantially the same composition or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of 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 said products, used singly or in combination:

(a) Will have any therapeutic value in the treatment of arthritis or constitute a cure or remedy for such condition.

(b) Will afford relief from the aches, pains and discomforts due to arthritis.

(c) Will prevent the recurrence of attacks of arthritis.

2. Disseminating or causing to be disseminated 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, any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

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 17th day of November, 1956, 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.

Decision

IN THE MATTER OF
BENJAMIN BRIAR PIPE COMPANY, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6540. Complaint, Mar. 27, 1956—Decision, Nov. 20, 1956*

Consent order requiring a Brooklyn, N.Y., manufacturer of tobacco smoking pipes to cease misrepresenting the quality and value of their products by such means as imprints on boxes and containers stating that certain pipes were "Imported Algerian Briar"; imprints on their artificially grained Hickok pipes that the pipes were "Straight Grain"; the statement on display cards that their McAndrews White Bowl pipe "Formerly Sold For \$2.50" and was being sold for 59¢ as a "Manufacturer's Closeout"; and stickers on their Bretton Hall and McAndrews White Bowl pipes that they were "Value \$2.50 Value," or "\$5.00" or "\$7.50 Value."

Mr. Michael J. Vitale for the Commission.

Mr. Moses M. Falk, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint March 27, 1956, against respondents Benjamin Briar Pipe Company, Inc., a corporation existing under and by virtue of the laws of the State of New York, and Leo Benjamin, Sarah Benjamin, and Nat Friedland, individuals and as officers of the respondent corporation, charging them with false representations in the advertising, marking and sale of tobacco smoking pipes in contravention of the provisions of the Federal Trade Commission Act.

After issuance and service of said complaint, respondents Benjamin Briar Pipe Company, Inc., Leo Benjamin, and Nat Friedland, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director of Litigation. The non-joinder in said agreement of the respondent Sarah Benjamin will be hereinafter explained. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the signatory respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.