

IN THE MATTER OF
RENOR COMPANY, INC., ET AL.

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

Docket 6617. Complaint, Aug. 22, 1956¹.—Decision, June 27, 1957

Order requiring a corporation in Milwaukee, Wis., and a partnership of its officers doing business in Chicago, Ill., each selling only in its own State a laxative preparation under the names "Renor Concentrate" and "Rennel Concentrate", respectively, to cease disseminating in commerce advertisements which represent that the preparation constitutes an effective treatment for obesity or will reduce the weight of the user.

Mr. R. P. Bellinger supporting the complaint.

Mr. Harlan W. Kelley, of Baraboo, Wis., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Formal complaint, issued August 22, 1956, charged respondents with disseminating and causing the dissemination of false advertisements for a drug preparation called "Renor Concentrate" and also "Rennel Concentrate." The allegations of the complaint in effect charge violation of Section 12(a)(1) of the Federal Trade Commission Act which is, by Section 12(b), made an unfair or deceptive act within the meaning of Section 5.

The complaint was, on motion, dismissed without prejudice as to respondents Glenn W. Braun and Clyde Witt, copartners trading as Rennel Products and Charles J. Braun and Rose Marie Witt, copartners trading as Rennel Sales because of misjoinder of parties.

Two separate answers were filed by the other respondents. Renor Company, Inc. a corporation and John T. Benson, Craig Benson and Charles B. Ryan, individually and as officers of said corporation filed one answer. John T. Benson and Craig Benson, copartners, trading as The Rennel Company filed the other answer.

Subsequent to the filing of these answers the complaint was amended to allege dissemination of the advertisements complained of, by broadcasts from radio stations which have the power and capacity to and do convey their messages across state lines to listeners in other states. The original complaint had limited the allegation concerning dissemination of the advertising to newspapers having interstate circulation. Separate answers were also filed to the amended complaint.

¹ Complaint amended and dismissed as to certain respondents Nov. 5, 1956.

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The answers admitted that the separate respondents were doing business under the corporate set up and partnership as alleged in the complaint, selling the product alleged but denied the dissemination of advertising in interstate commerce or sales in interstate commerce and denied Commission jurisdiction over respondents' acts and practices.

A hearing was held pursuant to notice in the complaint in Milwaukee, Wisconsin on October 30, 1956. Respondent, Renor Company, Inc., a corporation was present by its officers John T. Benson, Craig Benson and Charles B. Ryan who were also individual respondents and appeared as such. John T. Benson and Craig Benson named as copartners in the complaint also appeared in that capacity. All of these respondents were represented by counsel, participated in the hearing, afforded full opportunity to be heard, to introduce evidence pertinent to the issues and to examine and cross-examine witness. Proposed findings of fact, conclusions of law and orders were submitted by all parties.

The facts found, the conclusions reached and the order entered herein are based upon the entire record and hearing the testimony. All findings of fact, conclusions of law and orders proposed by all parties hereto, not adopted and included in this Initial Decision are specifically rejected.

FINDINGS OF FACT

Respondent Renor Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 5032 West State Street, Milwaukee, Wisconsin. Respondents John T. Benson, Craig Benson and Charles B. Ryan are officers of the respondent corporation and dominate and control its acts, policies and practices including the practices hereinafter mentioned. These individual respondents have an office at the same address as the corporate respondent.

John T. Benson and Craig Benson, two of the individual respondents already named are also copartners trading under the name of The Rennel Company and are located in that business at 3127 North Milwaukee Avenue, Chicago, Illinois.

Both the respondent corporation and the partnership were, on October 30, 1956 and for more than one year prior thereto, engaged in the business of selling and distributing a drug as that term is defined in the Federal Trade Commission Act. The designation used by the respondent Renor Company, Inc., for said preparation is "Renor Concentrate." The designation used by the partnership is

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"Rennel Concentrate." The preparation sold under both names is essentially the same. The formula and directions for use under both names are as follows:

FORMULA

Solid extract of sassafras bark.....	.25%
Solid extract of Oregon graperoot	.25%
Solid extract of senna leaves.....	.25%
Solid extract of prickly ash bark	.25%
Solid extract of cascara sagrada.....	7.00%
Magnesium sulphate.....	18.00%
Saccharin	.9 %
Sodium benzoate	.1 %
Water	73.00%

DIRECTIONS FOR USE

Home Recipe Directions—Empty contents of this bottle into a clean pint bottle. Add enough unsweetened grapefruit juice to fill bottle. Or use the juice of two lemons instead and add water to fill pint bottle. Shake well and use as directed.

Dosage—Adults: Take two tablespoonsful before breakfast and two table-spoonsful at bedtime. As this preparation contains laxative as well as other ingredients, increase or decrease dosage according to bowel action.

Important—Do not take until diluted as per mixing directions above. Cut down on starchy foods, such as potatoes, white bread, fatty foods, sweets, etc. Eat more fruit, leafy vegetables and fruit juices. Caution, use only as directed. No medicine containing a laxative should be taken when severe abdominal pain, nausea, vomiting or other symptoms of appendicitis are present.

Respondent Renor Company, Inc. advertised its preparation called Renor Concentrate during 1955 in the Milwaukee Sentinel, a newspaper published in Milwaukee, Wisconsin, and in January and February 1956 over Radio Station WOKY located in Milwaukee, Wisconsin. That radio station has power to and does convey its messages across state lines to listeners in other states. The average daily circulation of the newspapers carrying the advertisements of Respondent Renor Company, Inc. was as follows:

Total circulation	185,763
Mail subscriptions	18,359
Of which those going out of the state numbered	971

Respondents John T. Benson and Craig Benson doing business as The Rennel Company advertised the same preparation under the name of Rennel Concentrate in the Chicago American, a newspaper published in Chicago, Illinois, from January through October 1955 and from January through April 1956. The average daily circulation of the newspapers carrying the advertisements of these respondents was as follows:

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Total circulation -----	567,354
Distribution outside the State of Illinois -----	30,767
Number of copies sent by mail inside Illinois -----	11,876
Number of copies sent by mail to other states -----	5,335

Typical of the advertisements for Renor Concentrate is the following:

LOST 22 LBS. WITH RENOR RECIPE

GREEN BAY, WIS.—Renor Concentrate is truly wonderful. I lost 22 lbs. in a short period of time. I am 33 years of age and feel years younger since using this marvelous Renor Home Recipe. Before taking Renor I was always tired—no pep at all—now I can work all day and feel great. My friends have started using Renor and I am sure that anyone with a weight problem will be more than pleased with the results of Renor. Signed—Mrs. Harold Johanski of 215 N. Roosevelt St.

Renor is the safe no diet way to reduce. Get your bottle today.

Typical of the advertisements for Rennel Concentrate is the following:

LOST 46 LBS. WITH RENNEL RECIPE

ROCK ISLAND, ILL.—I want to thank the Rennel Co. for helping me to get rid of my excess weight. I weighed 184 lbs. when I started taking Rennel Concentrate. In a short time, thanks to this home recipe way to reduce, I reduced to 138. Now I am able to stay at 138 to 140 lbs. and recommend Rennel to any overweight folks. Thanks again to Rennel for helping me. So writes Mrs. L. M. Traenkle of 849 27th St.,

Rennel must give satisfaction with the very first bottle or manufacturers will refund your money. Get a bottle today.

These advertisements represented that the preparation constitutes a competent and effective treatment for obesity and will greatly reduce weight. They were disseminated for the purpose of inducing and were likely to induce the purchase of the preparation.

According to a stipulation in the record, well qualified medical experts were available who if called would testify that they were acquainted with the quantitative formula for the preparation including the directions for use and the pharmacological effects of the ingredients whether taken singly or in combination as set forth in the formula; that said preparation does not constitute a competent or effective treatment for obesity but is essentially a laxative, and none of its ingredients whether taken singly or collectively will reduce one's weight.

There was no evidence contrary to this stipulation.

Respondent Renor Company, Inc. has therefore caused the dissemination of false advertisements by United States mail and in commerce as "commerce" is defined in the Federal Trade Commission

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Act for the purpose of inducing and which were likely to induce the purchase of Renor Concentrate.

Respondents John T. Benson and Craig Benson doing business as The Rennel Company have caused the dissemination of false advertisements by United States mail and in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of Rennel Concentrate.

The annual volume of business of respondent Renor Company, Inc., in said preparation, is \$15,000 to \$17,000. The annual volume of business of respondents John T. Benson and Craig Benson, doing business as The Rennel Company in said preparation, is from \$50,000 to \$60,000.

The record shows that the Renor Company, Inc. sells only to drug stores in Wisconsin and that the partnership, The Rennel Company, sells only in the State of Illinois. The charter of the corporate respondent provides that "any sales of drugs, medicines and/or propriety medicines shall be confined exclusively to the State of Wisconsin."

The only question raised by respondents herein is that the Federal Trade Commission lacks jurisdiction to issue an order to cease and desist because none of the respondents ship the preparation, when sold, across state lines into another state.

This question must be decided against respondents under the plain wording of Section 12 of the Act. The Case of *F.T.C. v. Bunte Bros.*, 312 U.S. 349 relied upon by respondents is not in point. That case was not brought under Section 12. When the complaint in that case was issued, what is now Section 12 was not a part of the Federal Trade Commission Act. See 27 F.T.C. Decisions, page 911 which shows the complaint in that case to have been issued January 29, 1936. Section 12 was a part of the Wheeler-Lea Amendment which became the law in 1938.

CONCLUSIONS

The respondents have caused the dissemination of false advertisements for the preparation mentioned through the U.S. Mail and in commerce as "commerce" is defined in the Federal Trade Commission Act.

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.

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Opinion

ORDER

It is ordered, That respondent Renor Company, Inc., a corporation and its officers; respondents John T. Benson, Craig Benson and Charles B. Ryan, individually and as officers of said corporation; and respondents John T. Benson and Craig Benson copartners, trading as The Rennel Company, or under any other name, 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 designated as Renor Concentrate or Rennel Concentrate or of any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or names or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That said preparation constitutes a competent or effective treatment for obesity.

(b) That said preparation will reduce the weight of the user.

OPINION OF THE COMMISSION

By Tarr, Commissioner:

The initial decision filed by the hearing examiner ruled that the respondents there designated had caused the dissemination of false advertisements in violation of Section 12(a)(1) of the Federal Trade Commission Act as amended by the Wheeler-Lea Act. An order previously filed by the hearing examiner on October 23, 1956, dismissed the charges of the complaint without prejudice as to four other persons named as parties to the proceeding. The respondents named in the initial decision have appealed, and, unless otherwise designated, are hereinafter referred to as the respondents.

The respondent, Renor Company, Inc., is a Wisconsin corporation with its principal office and place of business located in Milwaukee, Wisconsin. Its policies and practices are directed and controlled by the respondents, John T. Benson, Craig Benson and Charles B. Ryan, who likewise serve as its officers. These respondents distribute a potion called Renor Concentrate. Sold only to retail outlets in Wisconsin, respondents' advertise it as effective for reducing weight. Respondents, John T. Benson and Craig Benson, trading as copartners under the name of The Rennel Company, also sell a potion called Rennel Concentrate, their distribution being limited to the

State of Illinois. It is essentially the same product as Renor Concentrate, however, and its advertising has claimed substantially the same benefits for it as those represented for Renor Concentrate. The place of business of The Rennel Company is in Chicago, Illinois.

Counsel have stipulated that well-qualified medical experts were available who, if called, would testify that neither of the preparations is a competent treatment for obesity nor effective in reducing weight. The prime issue presented by the appeal is whether jurisdiction is conferred over the respondents' practices under Section 12(a)(1) of the Act, as amended, which forbids the dissemination by the United States mails or in commerce by any means of false advertisements for food, drugs, cosmetics or therapeutic devices.

Because the respondent corporation limited its sales to the State of Wisconsin and the respondent partnership limited its sales to Illinois, the respondents assert that there is no showing that the advertisements were disseminated for the purpose of or with likelihood of inducing purchases in interstate commerce, and that their practices accordingly are outside the purview of the Act. However, respondents were charged with a violation of Section 12(a)(1), not Section 12(a)(2).¹ We think that all the jurisdictional requirements imposed by Section 12(a)(1) have been met.

The record shows, and the hearing examiner found, that the respondents caused various false advertisements for Renor Concentrate to be published in the Milwaukee Sentinel, a daily newspaper. Published in Milwaukee, that newspaper's average daily circulation of 185,763 included 18,359 copies which were transmitted to subscribers and others by the United States mail; and of the latter number, 971 daily copies went to persons outside the state. Renor Concentrate additionally has been advertised by the respondents over Radio Station WOKY, Milwaukee, which station conveys its messages across state lines to listeners in other states. The respondents, John T. Benson and Craig Benson, also caused advertisements for Rennell Concentrate to be published in the Chicago American, Chicago, Illinois, from January through October 1955 and from January through April 1956. Average daily circulation for that newspaper at that time included 30,767 copies distributed outside the State of Illinois, of which number approximately 5,000 copies were transmitted by

¹ Sec. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

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mail. The foregoing facts are not in dispute and they afford sound basis for the initial decision's findings that the respondents have caused the dissemination of false advertisements by the United States mails and by other means in commerce, for the purpose of inducing and which were likely to induce the purchase of the respondents' drug products.

For reasons stated in our opinion in *O-Jib-Wa Medicine Company, et. al.*, Docket No. 6548 (decided June 27, 1957), we think that the respondents' practices clearly violate Section 12(a)(1) and constitute unfair acts and practices in commerce within the meaning of the Act. As we noted there, to interpret that subsection as requiring a showing of sales in interstate commerce of the articles to which it relates, or likelihood thereof, would clash with its express language. Under Section 12(a)(1), as distinguished from Section 12(a)(2), violation depends upon the channel or channels by which dissemination of the false advertisements is effected, namely, whether such dissemination occurs by the United States mails or by any means in commerce.

The appeal is denied. The initial decision of the hearing examiner is hereby adopted as the decision of the Commission, together with his ruling providing for dismissal of this proceeding without prejudice as to the respondents, Glenn W. Braun and Clyde Witt, copartners trading as Rennel Products, and Charles J. Braun and Rose Marie Witt, copartners trading as Rennel Sales.

FINAL ORDER

Counsel for the respondents having filed an appeal from the initial decision of the hearing examiner and the matter having been heard on briefs; and the Commission having rendered its decision denying the appeal of the respondents and adopting the initial decision as the decision of the Commission:

It is ordered, That the respondent Renor Company, Inc., a corporation, and respondent Charles Ryan, individually and as an officer of said corporation, and respondents John T. Benson and Craig Benson, individually and as officers of said corporation, and as copartners trading as The Rennel Company, 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 contained in said initial decision.

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IN THE MATTER OF
WALKER-SCOTT CORPORATION DOING BUSINESS AS
WALKER-SCOTT COMPANY

Docket 6659. Complaint, Oct. 25, 1956—Decision, June 27, 1957;

MEIER & FRANK CO.

Docket 6661. Complaint, Oct. 25, 1956—Decision, June 27, 1957;

LIPMAN, WOLFE & COMPANY

Docket 6663. Complaint, Oct. 25, 1956—Decision, June 27, 1957;

HAROLD B. TOPLON DOING BUSINESS AS
URIST & TOPLON

Docket 6664. Complaint, Oct. 26, 1956—Decision, June 27, 1957.

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Consent orders requiring an individual in Los Angeles, Calif., concessionaire and operator of the fur departments of the three corporate retailer-respondents located in San Diego, Calif., and Portland, Ore., and said retailers, to cease violating the Fur Products Labeling Act by fictitious pricing of fur products in advertising fur sales, failing to reveal in advertising and invoicing essential information, and failing in other respects to conform to requirements of the Act.

Mr. John J. McNally and Mr. George E. Steinmetz for the Commission.

McInnis, Hamilton and Fitzgerald by Mr. Thomas M. Hamilton, of San Diego, Calif., for Walker-Scott Corp.

Rosenberg, Swire & Coan by Mr. Abe Eugene Rosenberg, of Portland, Ore., for Meier & Frank Co.

Koerner, Young, McColloch & Dezendorf by Mr. W. F. Lubersky, of Portland, Ore., for Lipman, Wolfe & Co.

Mr. Irwin M. Fulop and Mr. Berne Rolston, of Beverly Hills, Calif., for Harold B. Toplon.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaints in these matters charge the several respondents with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. By order of the hearing examiner issued contemporaneously with this decision all of said matters have been consolidated. An agreement has now been entered into by counsel supporting