

IN THE MATTER OF
THE WARSON PRODUCTS CORPORATION ET AL.

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

Docket 6711. Complaint, Jan. 18, 1957—Decision, Aug. 22, 1957

Consent order requiring sellers in St. Louis, Mo., to cease disseminating advertising in newspapers and by radio and television broadcasts which represented falsely that their "Warsene Capsules" were an effective treatment for the pains and discomforts of arthritis, rheumatism, etc.; contained several active ingredients and were made like a doctor's prescription; and were a new and different treatment not theretofore available which would not cause stomach upset.

The individual respondents agreed to the same consent settlement on Jan. 22, 1958, *infra*, p. 949.

Mr. Harold A. Kennedy for the Commission.

Rogers, Hoge & Hills, by *Mr. Andrew J. Graham* and *Mr. William L. McGuire*, of New York, N.Y., and *Mr. Donald E. Fahey*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 18, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false and misleading advertisements with respect to a drug preparation designated "Warsene Capsules," which Respondents sell and distribute in commerce.

On June 14, 1957, Respondent The Warson Products Corporation, by its president, Theodore E. Caruso; its counsel; and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent The Warson Products Corporation is identified in the agreement as a Missouri corporation, with its office and principal place of business located at Room 1810, 314 North Broadway, St. Louis, Missouri, its location prior to September, 1956, having been 220 North Fourth Street, St. Louis, Missouri.

The agreement specifies that it does not dispose of this proceeding as to Respondents John J. Powers, George R. Williams and Donald E. Fahey individually, and that the order contained therein does

not prohibit the representations alleged in sub-paragraphs 5 and 6 of Paragraph Six of the complaint, regarding Respondents' product being a buffered formula and that it is the result of research, for the reason that counsel supporting the complaint is of the opinion, on the basis of the evidence now available, that such allegations cannot be sustained.

With those two exceptions, Respondent The Warson Products Corporation admits all the jurisdictional facts alleged in the complaint; agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; and waives any further procedure before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

All parties signatory thereto agree that as to that part of this proceeding which is disposed of by this agreement, the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent The Warson Products Corporation that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding with respect to Respondent The Warson Products Corporation. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over Respondent The Warson Products Corporation, and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent The Warson Products Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the preparation "War-sene Capsules," or any preparation of substantially similar compo-

sition 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 said preparation:

a. Is an adequate, effective, or reliable treatment for the aches, pains, or discomforts of any kind of arthritis, rheumatism, neuralgia, neuritis, bursitis, sciatica, lumbago, muscle soreness, or allied disorders; will afford immediate, complete, or permanent relief from the aches, pains, or discomforts thereof, or have any therapeutic effect on the symptoms or manifestations of any such conditions or disorders in excess of affording temporary relief of minor aches or pains thereof;

b. Contains any analgesic ingredient other than salicylamide;

c. Is made like a doctor's prescription: *Provided, however*, This shall not prohibit the making of truthful representations concerning the use of such product by physicians;

d. Is a new, or substantially different, kind of preparation or substantially different in its mode of action or analgesic effect from other commonly-used analgesics;

e. Will not cause stomach upset;

2. Disseminating or causing to be disseminated any advertisements by any means, for the purpose of inducing, or which will likely induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of such preparation which contain 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 22nd day of August, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The Warson Products Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Findings

IN THE MATTER OF

BEN COHEN TRADING AS BENTON FURS

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

Docket 6501. Complaint, Feb. 9, 1956—Decision, Aug. 23, 1957

Order requiring a furrier in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, by setting forth on invoices the name of an animal other than that producing the fur in certain products, and by advertising which falsely represented prices of certain products as less than wholesale.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on February 9, 1956, issued and subsequently served its complaint in this proceeding upon the respondent named above charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. After the filing of answer by the respondent, a hearing was held before a hearing examiner of the Commission and testimony and other evidence was received into the record including evidentiary matters stipulated by agreement between counsel. On September 6, 1956, the hearing examiner filed his initial decision in which he held that certain of the complaint's charges were sustained by the greater weight of the evidence and that others should be dismissed for reasons of lack of jurisdiction or other proof.

The Commission having considered the cross-appeals filed from the initial decision of the hearing examiner and the entire record in this proceeding and having determined that the appeal of counsel supporting the complaint should be granted and the appeal of the respondent denied and that the initial decision should be vacated and set aside, the Commission further finds that this proceeding is in the interest of the public and now makes this its findings as to the facts, conclusions drawn therefrom and order, the same to be in lieu of said initial decision.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Ben Cohen is an individual trading as Benton Furs. He engages in the sale at retail of fur garments,