

Decision

IN THE MATTER OF
GLENN W. BRAUN AND CLYDE WITT TRADING AS
RENNEL PRODUCTS

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

Docket 6691. Complaint, Dec. 13, 1956—Decision, Dec. 18, 1957

Order requiring sellers in Toledo, Ohio, to cease representing falsely in advertisements in newspapers—prepared mainly from solicited testimonial letters, writers of which were given free bottles of the product—that their preparation “Rennel Concentrate,” essentially a laxative, constituted an effective treatment for obesity and would greatly reduce weight.

Mr. John W. Brookfield, Jr., supporting the complaint.

Boggs, Boggs & Boggs by *Mr. Ralph S. Boggs* of Toledo, Ohio, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Formal complaint, issued December 13, 1956, charged respondents with disseminating and causing the dissemination through the United States mails and in commerce of false advertisements for a drug preparation called 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 or practice within the meaning of section 5. After service of the complaint, answer was filed by the respondents.

Hearings were held pursuant to notice and agreement of counsel in Toledo, Ohio, and Ann Arbor, Mich. Respondents were represented by counsel who participated in the hearings and who were afforded full opportunity to be heard, to introduce evidence pertinent to the issues and examine and cross-examine witnesses. Proposed findings as to the facts, conclusions, and orders were submitted by both sides.

The facts found, the conclusions reached and the order entered herein are based upon the entire record and hearing the testimony. All findings as to the facts, conclusions and orders proposed by all parties hereto not adopted and concluded in this initial decision are specifically rejected.

Findings

54 F.T.C.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

Respondents Glenn W. Braun and Clyde Witt are copartners trading in the name of Rennel Products and are located in that business at 417 Main Street, Toledo, Ohio.

Respondents are now, and have been for more than 1 year prior to the issuance of the complaint, engaged in the business of selling and distributing a preparation called "Rennel Concentrate" which is sold and distributed in labeled 4-ounce bottles.

The qualitative formula and the directions for use of said Rennel Concentrate are as follows:

Fl. Sassafras Bark.....	¼%
Fl. Oregon Graperoot.....	¼%
Fl. Senna Leaves.....	¼%
Fl. Prickly Ash Bark.....	¼%
FE. Cascara Sagrada.....	7%
Magnesium Sulphate.....	18%
Saccharine.....	⅓%
Sodium Benzoate.....	⅓%
Alcohol.....	1%
Water.....	72%

Follow these simple directions for making 1 pint of liquid medicine. 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 under "Directions for taking."

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.

Average Directions for Taking after mixing as per Directions on Left Side Panel—Adults: Take two tablespoonsful before breakfast and two tablespoonsful at bedtime. As this preparation contains laxative as well as other ingredients, increase or decrease dosage according to bowel action. Some people need only one tablespoonful twice a day. NO medicine containing a laxative should be taken when severe abdominal pain, nausea, vomiting or other symptoms of appendicitis are present.

The gross volume of business done by respondents in said preparation averaged \$70,000 per year for each of the years 1954 and 1955. There is no proof that any sales of Rennel Concentrate were made without the State of Ohio.

During the period of time respondents have been in this business they have caused advertisements for said preparation to be placed from time to time in from 81 to 85 daily newspapers published in the State of Ohio, including the Toledo Blade. Copies of advertisements placed in the Toledo Blade on October 6, 1954; January 10, 1955; February 7, 1955; March 7, 1955; April 22, 1955; May 4, 1955; July

Findings

11, 1955; and August 1, 1955, were received in evidence, and are typical of respondents' advertising of Rennel Concentrate. Such or similar advertising was published in the 81 to 85 daily newspapers on an average of two or three times a week, according to their circulation. The newspapers having a larger circulation were used more frequently.

The Toledo Blade, during the period of time of publication of these advertisements, had a daily circulation as follows:

Total circulation	191, 405
Mail circulation	8, 515
Out of the State circulation	11, 323

The daily circulation of various other newspapers in which respondents' advertisements were published were also given in the record. The circulation of the Toledo Blade is merely used as an illustration.

The advertisements so published were prepared by respondents from testimonial letters written to respondents by users of the preparation. These testimonial letters were solicited with the understanding that the writer of the testimonial would be given six free bottles of Rennel Concentrate if his or her letter was used in advertising. Such advertisements were placed in the various newspapers at respondents' direction by the Miller Advertising Co. of Toledo, Ohio.

Typical of the representations contained in said advertisements are as follows:

I have been taking Rennel for just a short time but have found so much improvement in my health. I have already lost 25 pounds and feel more ambitious * * *. (Com. Ex. 1)

I have been taking Rennel for just a short time * * * I have already lost 25 pounds and feel more ambitious * * *. With Rennel Concentrate I didn't have to starve myself or go on a diet. * * * (Com. Ex. 6)

I have lost 75 pounds reducing with Rennel Concentrate. I did weigh 240 pounds. * * * I did not starve myself at any time and could eat anything I wanted. (Com. Ex. 7)

On the above state of facts the finding is made that respondents have disseminated and caused the dissemination by United States mails and in commerce of advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of Rennel Concentrate, which is a drug within the meaning of section 12(a)(1) of the Federal Trade Commission Act. Through the use of said newspaper advertisements respondents have represented directly and by implication that Rennel Concentrate constitutes a competent and effective treatment for obesity and will greatly reduce weight.

It was agreed between counsel on the record that the product involved in this proceeding and its directions for use are the same as the

product involved in a companion case, Rennel Sales, et al., Docket No. 6692. Also counsel for respondents in both proceedings being the same it was agreed on the record that the direct and cross-examination of the expert medical witnesses to be offered in support of the allegations of the complaint, would be along the same line and one hearing for receiving such testimony would suffice. Accordingly, the hearing examiner directed on the record that there be only one hearing held to receive such testimony and that copy of the proceedings at that hearing go into the official record and become a part thereof in docket No. 6692 and in this proceeding.

At such hearing, held by agreement of the parties and order of the hearing examiner in Ann Arbor, Mich., on April 25, 1957, two medical experts appeared and testified. They were Dr. Jerome W. Conn and Dr. Henry H. Swain. Their qualifications as experts are in the record. They testified generally on direct examination that obesity is overweight, but if the degree of overweight is less than 20 percent above the average weight it is not usually called obesity; that they had each seen the formula and directions for use of the product in question; that the effect of the preparation when taken in accordance with directions would be that of a mild laxative; that a laxative is not a competent or effective treatment for obesity or overweight and will not reduce obesity or overweight; that the ingredients of Rennel Concentrate taken singly or in combination will not reduce a person's obesity or overweight; that Rennel Concentrate will not reduce a person's obesity or overweight.

Neither doctor had ever taken Rennel Concentrate or prescribed it for any patients nor performed any experiments with this preparation. Both doctors admitted that the effect of a laxative may be to cause a runny stool, in which event a person's weight is temporarily reduced by the weight of water or liquid so removed from the body, but that upon loss of any significant amount of body fluid the person would become thirsty and rapidly replace the weight loss so caused by an equal or approximately equal intake of fluid. Both such weight loss and the reversal would happen in a matter of hours. Reduction of obesity or overweight to be of any significance means not a loss of body fluids, but a loss of fatty tissues which have been built up in the body over a period of time by a greater intake of calories in food than the body has used up in the expenditure of energy. Such excess of calories is deposited in the body as fat. The only way to reduce the fatty tissues in the body is to reverse the process and cut down the intake of calories to a point where the calories used by the body in expenditure of energy over a period of time is less than the intake. When this happens the

store of fat in the tissues is used up by the body to replace the deficiency in intake of calories. This does not mean that the reduction of fatty tissues will be permanent. Fat will again be stored in the body and one's weight will increase again any time the intake of calories over a period of time exceeds those used by the body in the expenditure of energy. There are certain drugs that are recognized as assisting in cutting down the ratio between the intake of calories and those used by the body, but Rennel Concentrate does not contain any of them.

The testimony in opposition to that of the medical experts mentioned consisted of five users of Rennel Concentrate who testified to losing from 14 to 54 pounds over varying periods of time while taking Rennel Concentrate according to directions. Such weight losses, they testified, were maintained by them for months after stopping the use of the preparation. None of them had kept any records. There was no medical testimony to the effect that the weight loss by them should be attributed to the use of Rennel Concentrate. The testimony of users as to the beneficial results derived by them from the use of a medicinal preparation is of little value and expert testimony is to be preferred over that of lay witnesses.¹ Indeed, the qualifications and background of the experts who testified in support of the allegations of the complaint, their knowledge of the subject, their frank answers and explanations, and their general demeanor on the stand make their testimony preponderate overwhelmingly on the point that Rennel Concentrate is not a competent or effective treatment for obesity or overweight.

The testimonials used in respondents' advertising refer to loss of weight of 75 pounds and other amounts so large that they could not possibly be the result of loss of liquids by the body. Also the testimonials refer to continuing loss of weight over a number of months while taking Rennel Concentrate. This also is proof of the fact that the weight loss referred to in the advertising was a loss of fatty tissue rather than loss of liquids which would be replaced within a few hours.

It is therefore found that the advertising was false advertising within the meaning of section 12(a)(1) of the Federal Trade Commission Act.

The aforesaid 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.

¹ *Elliott v. Frisk*, 58 F. 2d 820, 825; *Failey v. Heininger*, 105 F. 2d 79, 84; *Kay v. Federal Trade Commission*, 35 F. 2d 160.

Order

54 F.T.C.

ORDER

It is ordered, That respondents Glenn W. Braun and Clyde Witt, individuals and copartners trading as Rennel Products, 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 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on October 2, 1957, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Glenn W. Braun and Clyde Witt, 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.

Findings

IN THE MATTER OF
CHARLES J. BRAUN AND ROSE MARIE WITT TRADING AS
RENNEL SALES

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

Docket 6692. Complaint, Dec. 13, 1956—Decision, Dec. 18, 1957

Order requiring sellers in Detroit, Mich., to cease representing falsely in advertisements in newspapers—prepared mainly from solicited testimonial letters, writers of which were given free bottles of the product—that their preparation “Rennel Concentrate,” essentially a laxative, constituted an effective treatment for obesity and would greatly reduce weight.

Mr. John W. Brookfield, Jr., supporting the complaint.

Boggs, Boggs & Boggs by *Mr. Ralph S. Boggs* of Toledo, Ohio, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Formal complaint, issued December 13, 1956, charged respondents with disseminating and causing the dissemination through the United States mails and in commerce of false advertisements for a drug preparation called 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 or practice within the meaning of section 5. After service of the complaint, answer was filed by respondents.

Hearings were held pursuant to notice and agreement of counsel in Toledo, Ohio, Detroit and Ann Arbor, Mich., at which respondent Charles J. Braun was present and both respondents were represented by counsel, who participated in the hearings and who was afforded full opportunity to be heard, to introduce evidence pertinent to the issues, and to examine and cross-examine witnesses. Proposed findings as to the facts, conclusions 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 as to the facts, conclusions and orders proposed by all parties hereto not adopted and included in this initial decision are specifically rejected.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

Respondents Charles J. Braun and Rose Marie Witt are copartners trading in the name of Rennel Sales and located in that business at 2440 Fenkel Street, Detroit, Mich.