

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.

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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" (compounded and bottled by them from ingredients purchased from drug supply houses) which is sold and distributed by respondents in labeled 4-ounce bottles.

The qualitative formula and the directions for its use as shown on the label thereof and its quantitative formula 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 one 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 \$47,500 annually for the years 1954 and 1955. There is no proof that any sales of Rennel Concentrate were made without the State of Michigan.

During the period of time respondents have been in this business, they have placed or caused advertisements of Rennel Concentrate to be placed from time to time in 42 daily newspapers, including the Detroit News and Detroit Times, and three weekly newspapers published in the State of Michigan. The copy for the advertisements so placed or caused to be placed in the newspapers is prepared by the respondent Charles J. Braun using excerpts from testimonial letters written to respondents by users of the preparation. Those who write the testimonials are given a few bottles of the preparation in return for their letters if their names are used in the advertisements.

Typical of the testimonials contained in respondents' said advertisements are the following:

"I started taking Rennel Concentrate three and one-half months ago weighing 220 pounds. Up to now I have lost 45 pounds and feel a lot better. I eat as much as I did before I started taking Rennel. Not only have I lost weight but I also lost 4 inches at the waist. I know Rennel is doing me a lot of good. All this has been done with just a few bottles of Rennel and I will continue to take it until I reach my correct weight," so writes Joe Diguard, Box 141. (Com. Ex. 14)

"My doctor wants me to weigh 145 pounds and I think I will make it soon" writes Mrs. Mary Allen 5553 French Road, Detroit 13, Michigan. "I would like to tell you how much I like Rennel Concentrate, because with it I have lost 25 pounds in three months. My weight has gone from 197 to 172 and I am still losing weight regularly, several pounds a week. I am telling all my friends about Rennel since it is the only thing that helps me."

Thousands have found this amazing simple home recipe the safe economical no diet way to reduce * * *. (Com. Ex. 17)

The placing, scheduling and billing of the newspaper advertising copy prepared by respondent Charles J. Braun has been handled by the Miller Advertising Co. of Toledo, Ohio. The advertising company has, at the direction of respondents, arranged the placing and scheduling of these ads in the newspapers in Michigan having a relatively large circulation on an average of three times a week and less often in newspapers having a relatively small circulation. Particular reference is made to the circulation of two Detroit, Mich., papers in which respondents' advertising appeared.

The Detroit News, a daily newspaper of general circulation published in the city of Detroit, Mich., during a period respondents' said advertising appeared therein, from April 1, 1954, to March 31, 1955, had a total average daily circulation of 532,659, including 844 copies sent to subscribers through the United States mails and 9,166 copies sent to out of the State subscribers.

The Detroit Times, a daily newspaper of general circulation published in the city of Detroit, Mich., during a period of time respondents' said advertising appeared therein, from April 1, 1954, to March 31, 1955, had total average daily circulation of 592,178 copies including 1,672 copies sent to subscribers through the United States mails and 13,638 copies sent to out of the State subscribers.

The circulation of each of these newspapers for the 12 months' period following the period mentioned was approximately the same as the circulation given, and during that period of time respondents' said advertising was carried.

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

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and which were likely to induce, directly or indirectly, the purchase of Rennel Concentrate, which is a drug within the intent and 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 Products, et al., docket No. 6691. 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. 6691 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 six users of Rennel Concentrate who testified to losing from 23 pounds to 82 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 45 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

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

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.

ORDER

It is ordered, That respondents Charles J. Braun and Rose Marie Witt, individuals and copartners trading as Rennel Sales, 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, Charles J. Braun and Rose Marie 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.

Complaint

IN THE MATTER OF
ARNOLD VOGL ET AL. DOING BUSINESS AS RIVIERA
PACKING CO. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT

Docket 6752. Complaint, Mar. 27, 1957—Decision, Dec. 18, 1957

Consent order requiring canners of sardines, with principal office at Eastport and plants at Eastport and Milbridge, Maine—customarily selling through brokers who received commissions of up to 5 percent of the market price—to cease making illegal brokerage payments to customers in violation of section 2(c) of the Robinson-Patman Act by selling canned sardines directly to purchasers at prices as much as 5 percent below the market price, and by permitting brokers to make sales at 5 percent below market price and paying them less than the usual fee, with the result that the buyer received part of the brokerage.

Mr. Lewis F. Depro for the Commission.

Regosin & Edwards, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of section 2(c) of the Clayton Act (U.S.C. Title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Arnold Vogl, Edith Vogl, and Erna Fisher, sometimes hereinafter referred to as individual respondents, are individuals and copartners doing business under the firm name and style of Riviera Packing Co. with their principal office and place of business located at Eastport, Maine.

Respondent Milbridge Canning Corp., sometimes hereinafter referred to as corporate respondent, is a corporation organized and existing under the laws of the State of New York, with its plant and place of business located at Milbridge, Maine, and its principal office located at Eastport, Maine.

The individual respondents are and have been officers and sole stockholders of the corporate respondent.

PAR. 2. The partnership business of the individual respondents consists of the processing, canning, and packing of sardines and the sale and distribution thereof. The plant where the processing, can-