

IN THE MATTER OF
OLIVE TABLET COMPANY ET AL.

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

Docket 5090. Complaint, Dec. 1, 1943—Decision, Apr. 28, 1960

Consent order requiring the legal successors to the respondents named in the complaint, distributors of "Dr. Edwards' Olive Tablets," and their advertising agency, to cease advertising falsely that their said medicinal preparation would increase the flow of bile from the liver and cause the evacuation of bile from the gall bladder, and that it would tone up intestinal muscular action.

Mr. Fletcher G. Cohn supporting the complaint.

Mr. E. B. Kimpel, Jr., of Memphis, Tenn., and *Clark, Carr and Ellis* of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On December 1, 1943, the Federal Trade Commission issued its complaint charging respondents named in the caption hereof with violating the Federal Trade Commission Act by making false and deceptive representations in advertising the product known as "Dr. Edwards' Olive Tablets." Thereafter these respondents agreed to discontinue making the representations alleged to be false and deceptive pending final disposition of similar issues in Carter Products, Inc., Docket No. 4970, and they also agreed to execute a stipulation as to the facts based on the facts relating to these issues as would be found by the Commission in the Carter Case. On account of this agreement, proceedings in this matter have been held in abeyance until this time.

Since the issuance of the complaint all of the outstanding stock of respondent Olive Tablet Company, a corporation, has been acquired by Plough, Inc., a corporation, and Olive Tablet Company has been dissolved as a corporation. Also during this interval Erwin, Wasey, Ruthrauff and Ryan, a corporation, has become the legal successor to respondent Erwin, Wasey and Company, a corporation.

An agreement has been entered into between counsel supporting the complaint and Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff and Ryan, a corporation, and their attorneys, in which these two corporations consent that they may be legally bound as successors in interest by the complaint served on their predecessors

as though the complaint had been served upon them, and they consent that they may be made parties respondent herein.

The agreement referred to above with the existing respondents was submitted to the hearing examiner on March 8, 1960. This agreement also provides for the entry of a consent order. Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Plough, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3022 Jackson Avenue, Memphis, Tennessee, and is the legal successor to respondent Olive Tablet Company, now dissolved.

2. Respondent Erwin, Wasey, Ruthrauff and Ryan is a corporation existing by virtue of the laws of the State of Delaware, with its office and principal place of business located at 711 Third Avenue, New York, New York, and is the legal successor to respondent Erwin, Wasey and Company, a corporation which is no longer in existence.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff & Ryan, a corporation (the legal

successors to the Olive Tablet Company, and Erwin, Wasey and Company, which were named as respondents in the original complaint), and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the products designated "Dr. Edwards' Olive Tablets," or any other product of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

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

(a) That said preparation will aid in promoting the flow of bile or that it will increase or beneficially influence the formation, secretion or flow of bile from the liver or gall bladder;

(b) That said preparation will have any favorable effect on the toning up of any intestinal muscular action;

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph (1) hereof.

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 28th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff & Ryan, a corporation (the legal successors to the Olive Tablet Company, and Erwin, Wasey and Company, which were named as respondents in the complaint), 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.

Complaint

IN THE MATTER OF

ANCHOR CHEMICAL COMPANY, INC.

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

Docket 7701. Complaint, Dec. 21, 1959—Decision, Apr. 28, 1960

Consent order requiring a manufacturer of chemical specialties for the graphic arts industry, with principal office in Brooklyn, N.Y., to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by making payments as compensation for services or facilities furnished by some of its customers without making comparable payments to their competitors, such as \$2,800 paid for advertising to Foster Type and Equipment Co. of Philadelphia.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 827 Bergen Street, Brooklyn, New York.

PAR. 2. Respondent is now, and has been since 1945, engaged in the manufacture, sale and distribution of chemical specialties for the graphic arts industry. It sells its products to a large number of customers throughout the United States. Respondent makes sales directly to consumers in the New York City area, and in other parts of the country sales are made through 400 dealers who are in competition with each other and who resell anywhere in the United States. Respondent's total sales during the year 1958 were in excess of \$500,000.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes its products to be transported from the State of New York to its customers located throughout the country in various states other than the State of New York.

PAR. 4. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of