

a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF  
APPLETONE DRUGS, INC., ET AL.

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

*Docket 7855. Complaint, Apr. 6, 1960—Decisions, Aug. 17, 1960*

Consent orders requiring a Detroit drug wholesaler and the operator of a Milwaukee drugstore to cease representing falsely in advertising in newspapers and otherwise that a drug preparation known as "Berside-X" was a competent treatment and cure for arthritis, rheumatism, and similar diseases, would relieve pains thereof, would help the body produce its own cortisone, and was a new wonder formula; and requiring said wholesaler to cease representing falsely that advertising copy it furnished to retail druggists had been examined and approved by Government agencies.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Appleton Drugs,

Inc., a corporation, and Bernard J. Dziedzic, an individual trading as Kadow's Drug Store, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Appleton Drugs, Inc., is a corporation organized, existing and doing business under and laws of the State of Michigan, with its principal office and place of business located at 11329 Jos. Campau Avenue, in the City of Detroit, State of Michigan.

Respondent Bernard J. Dziedzic is an individual trading as Kadow's Drug Store, with his principal office and place of business located at 1950 West Mitchell Street, in the City of Milwaukee, State of Wisconsin.

Respondent Appleton Drugs, Inc., is a wholesaler of drug preparations which it sell to retail drug stores. Kadow's Drug Store is a retail drug store owned and operated by respondent Bernard J. Dziedzic.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof, and directions for use are as follows:

Designation: "Berside-'X'." Formula—

Each tablet contains:

|                                 |         |
|---------------------------------|---------|
| Aspirin.....                    | 3 grs.  |
| Salicylamide.....               | 4 grs.  |
| Phenacetin.....                 | 1 gr.   |
| Aluminum Hydroxide.....         | 2 grs.  |
| Calcium Carbonate.....          | 1 gr.   |
| Magnesium Oxide.....            | 1 gr.   |
| Lemon Bioflavonoid Complex..... | 15 mgs. |
| Ascorbic Acid.....              | 25 mgs. |

Directions:

For Adults only: Take two (2) tablets with water every three to four hours, as required, but not more than ten (10) tablets during any 24 hour day.

PAR. 3. Respondent Appleton Drugs, Inc. causes the said preparation, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in various other States of the United States. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce as "commerce" is defined in the Federal

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Trade Commission Act. The volume of business in such commerce has been and is substantial.

Respondent Bernard J. Dziedzic sells the preparation in the said Kadow's Drug Store and by mail order. This respondent's volume of business in said preparation has been and is substantial.

PAR. 4. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

ARTHRITIS  
RHEUMATISM  
Bursitis—Neuritis

The new Wonder Formula Is Here—Berside-"X" Is Its Name  
"Stabbing Pains" (in) Neck, Head, Shoulders  
\* \* \*

Sharp, Sword Pains (in arms and hands)  
\* \* \*

Aching and Soreness (in shoulder muscles)  
\* \* \*

Sharp, Heavy and Dull Pains (in back)  
\* \* \*

Sharp Agony Pains (in leg muscles)  
\* \* \*

Berside-"X" Has Been Known to Help Body  
PRODUCE ITS OWN CORTISONE.  
Berside-"X" STOPS, REALLY STOPS PAINS.

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented and are representing, directly and by implication:

1. That Berside-"X" will arrest the progress of, correct the underlying causes of and cure all kinds of arthritis, rheumatism, neuritis and bursitis.

2. That Berside-"X" is an adequate, effective and reliable treatment for all kinds of arthritis, rheumatism, neuritis and bursitis.

3. That Berside-"X" will afford complete relief of the aches and pains of all kinds of arthritis, rheumatism, neuritis, bursitis and affected body muscles, including the severe aches and pains thereof.

4. That Berside-"X" will help the body produce its own cortisone.

5. That Berside-"X" is a new, wonder formula.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Berside-"X" will not arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

2. Berside-"X" is not an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

3. Berside-"X" will not afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

4. Berside-"X" will not help the body produce its own cortisone.

5. Berside-"X" is not a new, wonder formula.

PAR. 8. Through the use of statements in advertisements disseminated as aforesaid, respondent Appleton Drugs, Inc., has also represented, directly or by implication, that advertising copy furnished by it to retail druggists for publication by the latter in local newspapers for the purpose of promoting sales of Berside-"X" had been examined by all Government agencies and the claims made in said copy approved by all said agencies or found by them to be correct.

PAR. 9. The said advertisements referred to in the foregoing Paragraph 8 are also misleading in material respects and also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, no agency of the United States Government had or has approved this respondent's advertising or found the claims made therein to be correct.

PAR. 10. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. John B. Poindexter*, hearing examiner.

*Mr. Berryman Davis* supporting the complaint.

Respondent Appleton Drugs, Inc., a corporation, *Pro Se*.

## INITIAL DECISION AS TO APPLETON DRUGS, INC., A CORPORATION

On April 6, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act by the use of false advertising in the sale and distribution of a preparation designated as Berside-"X".

After issuance and service of the complaint the above-named respondents filed their separate answers and entered into separate agreements for a consent order. The agreements dispose of the matters complained about. The proceeding as to respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store will be disposed of in a separate initial decision.

The pertinent provisions of said agreement are as follows: Respondent Appleton Drugs, Inc., a corporation, admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondent Appleton Drugs, Inc., a corporation, waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; said respondent waives further procedural steps before the hearing examiner and the Commission and the order may be altered, modified or set aside in the manner provided by statute for other orders; said respondent also waives any right to challenge or contest the validity of the order in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Appleton Drugs, Inc., a corporation, that it has violated the law as alleged in the complaint.

Upon 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 proper disposition of this proceeding insofar as it relates to respondent Appleton Drugs, Inc., a corporation. Accordingly, the hearing examiner finds that the acceptance of such agreement will be in the public interest and hereby accepts such agreement, makes the following jurisdictional findings and issues the following order.

## JURISDICTIONAL FINDINGS

1. Respondent Appleton Drugs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Michigan, with its principal office and place of business located at 11329 Jos. Campau Avenue, Detroit, Mich.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Appleton Drugs, Inc., a corporation and the proceeding is in the public interest.

## ORDER

*It is ordered*, That respondent Appleton Drugs, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Berside-"X", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name 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 indirectly:

A. That said preparation:

1. Will arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

2. Is an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

3. Will afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

4. Will help the body produce its own cortisone.

5. Is a new, wonder formula.

B. That the United States Government or any agency thereof has approved this respondent's advertising or found any claim made therein to be correct.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations 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 17th day of

August 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Appleton Drugs, Inc., 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.

Before *Mr. John B. Poindexter*, hearing examiner.

*Mr. Berryman Davis* supporting the complaint.

*Mr. Herbert L. Mount* of Milwaukee, Wisc., for Bernard J. Dziedzic an individual trading as Kadow's Drug Store.

INITIAL DECISION AS TO BERNARD J. DZIEDZIC AN INDIVIDUAL  
TRADING AS KADOW'S DRUG STORE

On April 6, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act by the use of false advertising in the sale and distribution of a preparation designated as Berside-"X".

After issuance and service of the complaint the above-named respondents filed their separate answers and entered into separate agreements for a consent order. The agreements dispose of the matters complained about. The proceeding as to respondent Appleton Drugs, Inc., a corporation, will be disposed of in a separate initial decision.

The pertinent provisions of said agreement are as follows: Respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; said respondent waives further procedural steps before the hearing examiner and the Commission and the order may be altered, modified or set aside in the manner provided by statute for other orders; said respondent also waives any right to challenge or contest the validity of the order in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Bernard J. Dziedzic,

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an individual trading as Kadow's Drug Store, that he has violated the law as alleged in the complaint.

Upon 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 proper disposition of this proceeding insofar as it relates to respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store. Accordingly, the hearing examiner finds that the acceptance of such agreement will be in the public interest and hereby accepts such agreement, makes the following jurisdictional findings and issues the following order.

## JURISDICTIONAL FINDINGS

1. Respondent Bernard J. Dziedzic is an individual trading as Kadow's Drug Store, with his principal office and place of business located at 1950 West Mitchell Street, Milwaukee, Wis.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store and the proceeding is in the public interest.

## ORDER

*It is ordered*, That respondent Bernard J. Dziedzic, an individual, trading as Kadow's Drug Store, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Berside-"X", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name 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 indirectly, that said preparation:

a. Will arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

b. Is an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

c. Will afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

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d. Will help the body produce its own cortisone.

e. Is a new, wonder formula.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in subparagraphs (a) to (e) inclusive, of 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 17th day of August 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store, shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.