

APPROVED FORMULAS, INC., ET AL.

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

Docket 8151. Complaint, Oct. 19, 1960—Decision, July 18, 1961

Consent order requiring New York City distributors to cease representing falsely in advertising that their vitamin and mineral preparations "Staminar", "Stress & Strain", and "Revitalin" were of benefit in treating tiredness, nervousness, premature aging, and other symptoms and conditions, as in the order below specified.

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 Approved Formulas, Inc., a corporation, and Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell, individually and as officers of said corporation, 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 Approved Formulas, Inc., 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 35 West 45th Street, in the City of New York, State of New York.

Respondents Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

The designations used by respondents for certain of their said various preparations, the formulas thereof and directions for use are as follows:

I. *Designation:*

Staminar.

Formula:

Two capsules supply:

Vitamin A.....	12,500 USP Units
Vitamin B ₁	10 mg.
Vitamin B ₂	10 mg.
Vitamin B ₆	0.5 mg.
Vitamin B ₁₂ Act.....	5 mcg.
(Cobalamin Conc.)	
Vitamin C.....	100 mg.
Vitamin D.....	1,250 USP Units
Vitamin E.....	5 Int. Units
Vitamin K (as Menadione).....	1 mg.
Betaine HCL.....	10 mg.

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Biotin.....	10 mcg.
Calcium Pantothenate.....	5 mg.
Choline Bitartrate.....	10 mg.
Diastase Enzyme.....	20 mg.
Folic Acid.....	0.25 mg.
Inositol.....	10 mg.
Intrinsic Factor Concentrate with Vitamin B ₁₂	0.1 USP Unit Oral
Para-aminobenzoic Acid.....	10 mg.
Lemon Bioflavonoid Complex.....	10 mg.
L-Lysine HCL.....	10 mg.
di-Methionine.....	10 mg.
Niacinamide.....	50 mg.
Rutin.....	10 mg.
Calcium.....	90 mg.
Phosphorus.....	40 mg.
Magnesium.....	3 mg.
Manganese.....	0.5 mg.
Molybdenum.....	0.1 mg.
Potassium.....	1 mg.
Iron.....	10 mg.
Iodine.....	0.1 mg.
Cobalt.....	0.2 mg.
Copper.....	0.5 mg.
Nickel.....	0.1 mg.
Zinc.....	0.5 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends 2 capsules daily with breakfast or dinner as a dietary supplement.

II. *Designation:*

Stress & Strain.

Formula:

Two capsules supply:

Vitamin B ₁	20 mg.
Vitamin B ₂	20 mg.
Vitamin B ₆	3 mg.
Vitamin B ₁₂ Act.....	10 mcg.
(Cobalamin Conc.)	
Vitamin C.....	200 mg.
Vitamin A.....	25,000 USP Units
Vitamin D.....	2,000 USP Units
Vitamin E.....	10 Int. Units
Vitamin K (as Menadione).....	2 mg.
Betaine HCL.....	30 mg.
Biotin.....	20 mcg.
Calcium Pantothenate.....	15 mg.
Choline Bitartrate.....	20 mg.
Diastase Enzyme.....	50 mg.
Folic Acid.....	0.5 mg.
Inositol.....	20 mg.

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Intrinsic Factor Conc. with Vitamin B ₁₂	1/6 USP Oral Unit
L-Lysine HCL.....	30 mg.
di-Methionine.....	20 mg.
Niacinamide.....	100 mg.
PABA.....	20 mg.
Rutin.....	15 mg.
Lemon Bioflavonoids.....	15 mg.
Calcium.....	100 mg.
Phosphorus.....	45 mg.
Iron.....	10 mg.
Iodine.....	0.1 mg.
Cobalt.....	0.3 mg.
Copper.....	1 mg.
Magnesium.....	4 mg.
Manganese.....	1.5 mg.
Molybdenum.....	0.2 mg.
Nickel.....	0.2 mg.
Potassium.....	2 mg.
Zinc.....	1 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends two capsules daily with breakfast or dinner as a dietary supplement.

III. *Designation:*

Revitalin.

Formula:

Four capsules supply:

Choline Bitartrate.....	300 mg.
Inositol.....	100 mg.
di-Methionine.....	100 mg.
Betaine HCL.....	150 mg.
L-Lysine HCL.....	100 mg.
Diastase Enzyme.....	150 mg.
Intrinsic Factor Concentrate with Vitamin B ₁₂	1/6 USP Oral Unit
Vitamin A.....	25,000 USP Units
Vitamin D.....	1,500 USP Units
Vitamin B ₁	15 mg.
Vitamin B ₂	15 mg.
Vitamin B ₆	5 mg.
Vitamin B ₁₂ Act.....	15 mcg.
(Cobalamin Conc.).....	
Vitamin C.....	150 mg.
Vitamin E.....	15 Int. Units
Vitamin K (as Menadione).....	2 mg.
Biotin.....	30 mcg.
Calcium Pantothenate.....	15 mg.
Folic Acid.....	0.75 mg.
Niacinamide.....	100 mg.
Para-aminobenzoic Acid.....	30 mg.
Rutin.....	20 mg.

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Lemon Bioflavonoid Complex.....	20 mg.
Calcium.....	100 mg.
Phosphorus.....	45 mg.
Iron.....	10 mg.
Iodine.....	0.1 mg.
Cobalt.....	0.3 mg.
Copper.....	1.5 mg.
Magnesium.....	5 mg.
Manganese.....	2.5 mg.
Molybdenum.....	0.3 mg.
Nickel.....	0.3 mg.
Potassium.....	3 mg.
Zinc.....	2 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends two capsules with breakfast and two capsules with dinner as a dietary supplement.

PAR. 3. Respondents cause the said designated preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations 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, circulars, brochures, catalogs and other media, for the purpose of inducing, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations 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 preparations 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, with respect to respondents' preparation designated "Staminar", are the following:

For the typical Young Adult
MORE ENERGY

FEWER COLDS

LESS IRRITABILITY

Did you end the day dragging your feet? . . . Tired? . . . over-worked? . . . worried? . . . Irritable? Do you have too many colds?

* * * Well-rounded potencies of the B-Complex factors plus Vitamin C attack nervousness and fatigue. Amazing "red" Vitamin B₁₂, Iron, Copper and Intrinsic Factor Concentrate for rich, red blood, means more energy.

The ideal answer to the common tired feeling in young adults.

Many authorities agree that the adult, during his "building years" of family and career, has specialized needs. These men and women are subjected to great, often excessive demands on their time, minds and bodies. They end the day dragging their feet . . . tired . . . over-worked . . . irritable . . . worried . . . and suffer from too many colds.

PAR. 6. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing directly and by implication, that "Staminar" will be of benefit in the treatment of tiredness, lack of energy, nervousness, irritability, worry and susceptibility to colds.

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, "Staminar" (a) will not be of benefit in the treatment of worry or susceptibility to colds, and (b) will not be of benefit in the treatment of tiredness, lack of energy, nervousness, or irritability, except in a small minority of persons whose tiredness, lack of energy, nervousness and irritability are symptoms of an established deficiency of one or more of the nutrients provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who lack energy, and who are nervous and irritable, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Staminar". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who lack energy, and who are nervous and irritable, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Staminar", and that in such cases the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in said advertisements as hereinabove set forth, with re-

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spect to respondents' preparation designated "Stress & Strain", are the following:

FOR THE STRESS AND STRAIN OF MIDDLE YEARS Extra High Potencies for those who are always Tired, Depressed, never really well.

* * * * *

Extreme Pressures? Overwork?

Low Resistance? (in connection with depiction of sneezing woman)

Tense nerves?

* * * * *

"Stress and Strain" * * * speed up the conversion of food into energy . . . strengthen nerve tissues . . . and tend to reduce tensions. * * * also help overcome sensitivity to noise, loss of morale and irritability.

Vital Digestive Enzyme Added.—During these middle years, eating meals under tension, digestive upsets, gas discomforts, heartburn, etc., are all too common. * * * 50 mg. of Diastase, an invaluable aid to digestion, have been added.

PAR. 9. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication, that "Stress & Strain" will be of benefit in the treatment of stress and strain, low resistance to colds, tension, loss of morale, sensitivity to noise, tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts and "heartburn", and that the diastase contained in the preparation is an aid to digestion.

PAR. 10. 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, (a) "Stress & Strain" will not be of benefit in the treatment of stress and strain, low resistance to colds, tension, loss of morale or sensitivity to noise, (b) "Stress & Strain" will not be of benefit in the treatment of tiredness, depression, nervousness, irritability digestive upsets, gas discomforts or "heartburn" except in a small minority of persons whose tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts and "heartburn" are symptoms of a deficiency of one or more of the nutrients provided by the preparation, and (c) the diastase contained in the preparation is not an aid to digestion.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who are nervous, irritable and depressed, and who have digestive upsets, gas discomforts and "heartburn", that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Stress & Strain". In the light of such statements and representations, said

advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who are nervous, irritable and depressed, and who have digestive upsets, gas discomforts and "heartburn", these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Stress & Strain", and that in such cases the said preparation will be of no benefit.

PAR. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondents' preparation designated "Revitalin", are the following:

For OLDER PEOPLE . . . an advanced Geriatric formula * * *

Feel Younger

Fewer Aches

New Vitality

Avoid Vitamin Deficiencies—Deficiencies are more common as we grow older due to life-time eating habits . . . digestion difficulties . . . illnesses . . . loss of appetite . . . resulting in loss of vitality, irritability, digestive discomforts and premature aging.

Effective Lipotropic Action—The loss of liver efficiency may lead to fatty-like deposits in the arteries, affecting circulation and can ultimately lead to hardening of the arteries. Therapeutic amounts of Choline, Inositol and Methionine are included for their effects on fat digestion and reduction of Cholesterol in vitamin deficiencies.

Diastase * * * aids in overcoming discomfort of gas from improper digestion.

NEW LIFE, NEW HEALTH FOR OLDER FOLKS—for Premature Aging that causes constant Fatigue, Restless Sleep, Digestive Disturbances.

LOOK YOUNGER!

NEW STRENGTH AND VITALITY!

FEWER ACES AND PAINS

PAR. 12. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication, that "Revitalin" will be of benefit in the reduction of cholesterol and prevention of hardening of the arteries, that the said preparation will be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep and loss of vitality, and that the diastase contained in the preparation aids in overcoming discomfort of gas from improper digestion.

PAR. 13. 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, (a) "Revitalin" will not be of

benefit in the reduction of cholesterol or prevention of hardening of the arteries, (b) "Revitalin" will not be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep or loss of vitality except in a small minority of persons whose tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep and loss of vitality are symptoms of a deficiency of one or more of the nutrients provided by the preparations, and (c) the diastase contained in the preparation is not an aid to overcoming discomfort of gas or any other manifestation of improper digestion.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who are nervous and irritable, who have aged prematurely and lost vitality, whose sleep is restless, and who suffer from aches, pains and digestive disturbances, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Revitalin". In the light of such statements and representations said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who are nervous and irritable, who have aged prematurely and lost vitality, whose sleep is restless, and who suffer from aches, pains and digestive disturbances, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Revitalin", and that in such cases the said preparation will be of no benefit.

PAR. 14. 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.

Berryman Davis, Esq., for the Commission.

Melville Ehrlich, Esq., of Washington, D.C., and *William D. Rogers, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on October 19, 1960. It charges respondents with the dissemination in commerce of false advertising concerning the efficacy of certain preparations including: STAMINAR, STRESS & STRAIN and REVITALIN. It further charges that such advertisements constitute unfair and deceptive acts and practices in violation of the Federal Trade Commission Act.

On May 11, 1961, counsel presented to the undersigned a proposed agreement duly executed by respondents, Approved Formulas, Inc., Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell, their counsel, William D. Rogers and Melville Ehrlich, and counsel supporting the complaint. Said agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

Attached to and made a part of said agreement are affidavits of Jack Bernard, Richard P. Bernard and Philip Edell, named in the complaint as Phil Edell, to the effect that their duties as officers of the corporation deal with matters other than matters relating to the advertising or advertising policy of the respondent Approved Formulas, Inc. The agreement recommends that the complaint be dismissed as to said Jack Bernard, Richard P. Bernard and Phil Edell in their individual capacities and the order agreed upon follows this recommendation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent parties of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The 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;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it 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 Approved Formulas, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 35 West 45th Street, in the City of New York, State of New York.
2. Respondent Edward Yass, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein-after set forth. Respondents Jack Bernard, Richard P. Bernard and Phil Edell are officers of the corporate respondent. Their address is the same as that of the corporate respondent.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Approved Formulas, Inc., a corporation, and its officers, and Edward Yass, individually and as an officer of said corporation, and Jack Bernard, Richard P. Bernard and Phil Edell, as officers of the corporate respondent, 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 "Staminar", "Stress & Strain" and "Revitalin", or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, 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:

(a) That "Staminar":

(1) Will be of benefit in the treatment of worry or susceptibility to colds; or

(2) Will be of benefit in the treatment of tiredness, lack of energy, nervousness or irritability, unless such advertisement expressly limits

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the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(b) That:

(1) "Stress & Strain" will be of benefit in the treatment of stress, strain, low resistance to colds, tension, loss of morale or sensitivity to noise;

(2) "Stress & Strain" will be of benefit in the treatment of tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts or "heartburn", unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit, or;

(3) That the diastase contained in the preparation is an aid to digestion.

(c) That:

(1) "Revitalin" will be of benefit in the reduction of cholesterol or prevention of hardening of the arteries;

(2) "Revitalin" will be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep or loss of vitality, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit, or;

(3) That the diastase contained in the preparation is an aid to overcoming discomfort of gas or any other manifestation of improper digestion.

2. Disseminating, or causing to be disseminated, for the purpose of inducing or which is likely to induce, directly or indirectly, the

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purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, any advertisement which contains any of the representations prohibited in Paragraph 1, above, or which fails to comply with the affirmative requirements of Paragraph 1, above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents Jack Bernard, Richard P. Bernard and Phil Edell as individuals.

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 18th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Approved Formulas, Inc., a corporation, Edward Yass, Jack Bernard, Richard P. Bernard and Phil Edell, as officers of said corporation and Edward Yass, individually, 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.
