

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against the Respondent, should future events so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of August 1961, become the decision of the Commission.

IN THE MATTER OF

NATIONAL DRUG PLAN, INC., ET AL.

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

Docket 8099. Complaint, Aug. 25, 1960—Decision, Aug. 2, 1961

Consent order requiring Washington, D.C., mail order sellers of drugs, prescriptions, and pharmaceuticals, to cease making false representations in advertising their comparative prices and savings for customers, and their services and operations, 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 National Drug Plan, Inc., a corporation, and Aaron Abranson, individually and as an officer 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 National Drug Plan, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 731 North Capitol Street, Washington 2, D.C. Respondent Aaron Abranson is President of the corporate respondent and Chairman of its Board of Directors. He dominates, controls and directs the policies, acts and practices of the respondent corporation, including the acts and practices hereinafter set out.

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The address of the above individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several months have been, engaged in the advertising, offering for sale, sale and distribution of drugs, prescriptions and pharmaceuticals to the public usually by mail.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various other States of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements in their advertisements concerning their products. Among and typical of such statements are the following:

Save 25% to 50% on all your prescriptions and vitamins through membership in National Drug Plan.

* * * * *

You save because we operate on a volume basis.

* * * * *

Our registered pharmacists compound your prescriptions in ultra-modern regularly inspected pharmacies.

* * * * *

Only select Occupation Groups are Eligible.

* * * * *

No matter how great your needs for vitamins and prescriptions may become through the years we will fill your requests.

* * * * *

PAR. 5. By and through the aforesaid statements respondents represented, directly and by implication:

1. That they offer prescriptions and vitamin products at savings of 25% to 50% from the price which those participating in their plan would be required to pay if bought by them in their respective communities.

2. That such savings are possible because they operate on a volume basis.

3. That their prescriptions are compounded by their own pharmacists in inspected pharmacies.

4. That they sell only to select groups.

5. That they can and will fill all prescriptions.

PAR. 6. Said statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. Purchasers cannot save any stated amount on prescriptions as costs of prescriptions differ in different localities depending upon the brand of drugs used and the amount added for professional services in compounding the prescriptions.

Purported savings claimed by respondents on vitamins are based upon fair trade prices. There are many localities where fair trade prices do not prevail and vitamins can be purchased for amounts substantially less than fair trade prices in such localities.

2. Proposed respondents do not operate on a volume basis.

3. Many of the prescriptions sold by proposed respondents are not compounded by them but are purchased from others. The District of Columbia does not inspect pharmacies.

4. Proposed respondents sell to everyone.

5. Respondents cannot fill prescriptions containing narcotics as these cannot be transported through the mails.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of drugs, prescriptions and pharmaceuticals of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Morton Nesmith for the Commission.

Respondents for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued August 25, 1960, charging the Respondents with using, in advertisements concerning their products, false, misleading and deceptive statements and representations which constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the Federal Trade Commission Act.

Thereafter, on June 9, 1961, Respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on June 14, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent National Drug Plan, Inc. as a Delaware corporation, with its office and principal place of business located at 731 North Capitol Street, Washington, D.C., and Respondent Aaron Abramson (erroneously named in the complaint as Aaron Abranson) as an officer of the corporate respondent, who formulates, directs and controls the policies, acts and practices thereof, his address being the same as that of the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

After 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 satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist, finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents National Drug Plan, Inc., a corporation, and its officers, and Aaron Abramson, individually and as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of prescriptions, vitamins, pharmaceuticals and drugs or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Any savings are afforded in the purchase of said products unless the price at which they are offered constitutes a reduction from the price at which such products are usually and customarily sold in the trade area where the representation is made;
2. Respondents operate on a volume basis;
3. Respondents compound all of the prescriptions filled by them; or that they compound any number or proportion of prescriptions filled by them which is not in accordance with the facts;
4. Their prescriptions are compounded in inspected pharmacies, unless such is the fact;
5. Respondents sell only to selected persons or groups;
6. Respondents can fill all types of prescriptions and ship them through the United States mails;

B. Misrepresenting in any manner the amount of savings available to purchasers of Respondents' prescriptions, vitamins, pharmaceuticals, drugs, or other products, or the amount by which the price thereof is reduced from the price at which they are usually and customarily sold by Respondents or their competitors in the normal course of their business.

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 2d day of August 1961, become the decision of the Commission; and, accordingly:

DOMINION BRIQUETTES & CHEMICALS, LTD., ET AL. 175

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It is ordered, That respondents National Drug Plan, Inc., a corporation, and Aaron Abramson, individually and as an officer of said corporation, 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.
