

283

Complaint

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

IN THE MATTER OF

THOMPSON MEDICAL CO., INC., ET AL.

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

Docket 8399. Complaint, May 16, 1961—Decision, Aug. 22, 1961

Consent order requiring New York City distributors of their "Tranquil-Aid" drug preparation to cease representing falsely in newspaper advertising and otherwise that their said product was a new medical or scientific discovery and was absolutely harmless and safe to take.

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 Thompson Medical Co., Inc., a corporation, and S. Daniel Abraham, William Jackson and Stella K. Abraham, 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:

PAR. 1. Respondent Thompson Medical Co., 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 place of business located at 43 West 23d Street, New York, New York.

Respondents S. Daniel Abraham, William Jackson and Stella K. Abraham are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent and 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 advertising, offering for sale, sale and distribution of a drug preparation designated "Tranquil-Aid," which preparation contains ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Com-

Complaint

59 F.T.C.

mission Act. The formula and directions for use of said preparation are as follows:

Formula:

Glycerol Guaiacolate.....	50 mgm.
Methapyrilene HCl.....	20 mgm.
Pyranisamine Maleate (2-(2- Dimethylamino Ethyl) P-Methoxy- benzyl Amino) Pyridine).....	5 mgm.
Salicylamide.....	1. 5 gr.
Magnesium Trisilicate	
Also contains:	
Vitamin B1.....	1 mg.
Vitamin B2.....	½ mg.
Niacinamide.....	25 mg.
Ascorbic Acid.....	30 mg.
Phenacitin.....	1. 5 gr.

NOT A TRANQUILIZER. DOES NOT CONTAIN BARBITURATES
OR BROMIDES. NOT HABIT FORMING.

HELPS YOU RELAX NIGHT OR DAY

Directions: For relief of Functional Nervous symptoms such as Nervous Tension, Headaches, Restlessness, Nervous Irritability: Take 1 or 2 tablets with a full glass of water or milk. Repeat 1 tablet in one hour if necessary.

SLEEPLESSNESS: As an aid to sleep take one or two tablets with a glass of warm milk 20 minutes before retiring.

Caution: If drowsiness occurs, do not drive or operate machinery. Do not take more than 4 tablets in 24 hours. Avoid frequent or continuous use. Not intended for children. If nervous symptoms persist, recur frequently, or are unusual, consult your physician.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said "Tranquil-Aid" when sold, to be shipped from their place of business in the State of New York to purchasers thereof, many of whom are 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been 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 preparation by the United States mail 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, 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 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:

Amazing new wonder capsule helps you relax!

Medicine's New 'GOLDEN BULLET'

Safe, effective, Tranquil-Aid contains no barbiturates, is not habit forming.

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

1. That their said preparation is a new medical or scientific discovery or development.

2. That their said preparation is absolutely harmless and safe to take.

PAR. 7. The aforesaid 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. Respondents' said preparation is not a new medical or scientific discovery or development. Its ingredients have been known to and prescribed by the medical profession for some time.

2. Respondents' said preparation is not absolutely harmless and safe to take. It is dangerous when taken by some individuals.

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted and not constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs for the Commission.

Davis, Gilbert, Levine & Schwartz, by *Mr. Joshua Levine*, New York, N.Y., for respondents Thompson Medical Co., Inc., S. Daniel Abraham and Stella K. Abraham.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by

the dissemination of false advertisements with respect to their drug preparation designated "Tranquil-Aid".

Thereafter, on June 15, 1961, all Respondents except William Jackson, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Assistant Director of the Commission's Bureau of Litigation, and thereafter, on June 26, 1961, submitted to the Hearing Examiner for consideration. The agreement provides that this proceeding will be otherwise disposed of as to Respondent William Jackson.

The agreement identifies Respondent Thompson Medical Co., Inc. as a New York corporation, with its principal place of business located at 43 West 23d Street, New York, New York, and Respondents S. Daniel Abraham and Stella K. Abraham as officers of the corporate respondent, who formulate, direct and control the policies, acts and practices of the corporate respondent, their 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 as to Respondents Thompson Medical

Co., Inc., S. Daniel Abraham, and Stella K. Abraham. 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 Thompson Medical Co., Inc., a corporation, and its officers, and S. Daniel Abraham, and Stella K. Abraham, individually and as officers of said corporation, 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 product "Tranquil-Aid", or any other medicinal or drug preparation of substantially the same formula, whether sold under this name or any other name, 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 means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement, directly or indirectly:

(a) Represents in any manner that any such product or preparation is harmless or safe to take;

(b) Represents that any such product or preparation is a new medical or scientific discovery or development;

2. Disseminating or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any such product or preparation, 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 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Thompson Medical Co., Inc., a corporation, and S. Daniel Abraham and Stella K. Abraham, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commis-

Decision

59 F.T.C.

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

Mr. Edward F. Downs for the Commission.

No appearance for respondent William Jackson.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to their drug preparation designated "Tranquil-Aid".

On July 12, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting dismissal of the complaint without prejudice as to Respondent William Jackson, individually and as an officer of the corporate Respondent, for the reasons that the complaint was never served on Respondent Jackson, but was returned marked "Moved Left No Address"; and, according to counsel for the other Respondents, William Jackson is no longer connected with the corporate Respondent as an officer or otherwise.

After due consideration, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting the complaint that the dismissal without prejudice of the complaint herein, without prejudice, as to Respondent William Jackson will be in the public interest. Therefore,

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

DECISION OF THE COMMISSION

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 14, 1961, 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.

Complaint

IN THE MATTER OF

B. GERTZ, INC.

·CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 8351. Complaint, Apr. 13, 1961—Decision, Aug. 22, 1961

·Consent order requiring a furrier in Jamaica, Long Island, N.Y., to cease violating the Fur Products Labeling Act by failing to disclose, in advertising in newspapers, the name of the animal producing certain fur and setting forth therein the name of another animal.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that B. Gertz, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling 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 B. Gertz, Inc., is a corporation organized, 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 162-10 Jamaica Avenue, Jamaica, Long Island, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent advertised fur products which were made in whole or in part of fur which has been shipped and received in commerce as the terms "fur", "fur product" and "commerce" are defined in the Fur Products Labeling Act and which advertisements were not in