

Complaint

IN THE MATTER OF

SEDAQUIL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8400. Complaint, May 16, 1961—Decision, Sept. 6, 1961*

Consent order requiring Bedford, Ohio, distributors of their drug preparation designated "Sedaquil" or "Sedaquilin" 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 Sedaquil, Inc., a corporation, and William K. Kutler, Gertrude K. Kutler and William J. Kraus, 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 Sedaquil, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in Bedford, Ohio.

Respondents William K. Kutler, Gertrude K. Kutler and William J. Kraus are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The mailing address of all respondents is Box 97, Bedford, Ohio.

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 "Sedaquil" or "Sedaquilin", which preparation contains ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act. The formula and directions for use of said preparation are as follows:

Formula:

Salicylamide	3.0 gr.
Acetophenetidin	2.5 gr.
Atropine Sulfate	0.02 mg.
Hyoscyamine Sulfate	0.1 mg.
Hyoscyne Hydrobromide	0.008 mg.
Methapyrilene Hydrochloride	10 mg.

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Directions: Adults—1 or 2 capsules as needed every 3 to 4 hours. Not more than 6 capsules every 24 hours. For detailed directions see enclosure.

Caution: Activities which require close attention and alertness such as driving a motor vehicle or operation of machines should not be undertaken immediately after taking SEDAQUIL.

AS WITH ALL MEDICINES KEEP OUT OF REACH OF CHILDREN.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused their said "Sedaquil" or "Sedaquilin", when sold, to be shipped from their place of business in the State of Ohio 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 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 magazines and by means of television and radio broadcasts transmitted by television and radio stations having sufficient power to carry such broadcasts across state lines, 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:

Find safe relief with medical science's newest discovery . . . Sedaquil
Yes, SEDAQUIL . . . the new medical achievement that helps bring safe, soothing relief from nervous tension.

Get Safe, Non-Habit forming SEDAQUILIN

New Medical Achievement SEDAQUILIN

SEDAQUILIN is safe, new medical preparation that relieves simple tension.

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 achievement.

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

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. Respondents' said preparation is not a new medical or scientific discovery or achievement. Its ingredients have been prescribed by doctors in substantially the same combination 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 now 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;

Mr. Vincent A. Kleinfeld, Washington, D.C., for respondents Sedaquil, Inc., William K. Kutler and Gertrude K. Kutler.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT WILLIAM J. KRAUS
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 "Sedaquil" or "Sedaquilin".

Thereafter, on July 14, 1961, all Respondents except William J. Kraus, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease and Desist, which was approved by the Commission's Chief, Division of Food & Drug Advertising, and Director, Bureau of Deceptive Practices, and thereafter, on July 19, 1961, submitted to the Hearing Examiner for consideration. The agreement provides that this proceeding will be otherwise disposed of as to Respondent William J. Kraus.

The agreement identifies Respondent Sedaquil, Inc., as an Ohio corporation, with its principal office and place of business located at Bedford, Ohio, and Respondents William K. Kutler and Gertrude K. Kutler as officers of the corporate Respondent, who formulate, direct and control the policies, acts and practices thereof, their mailing address being Box 97, Bedford, Ohio.

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 Sedaquil, Inc., William K. Kutler, and Gertrude K. Kutler. 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 Sedaquil, Inc., a corporation, and its officers, and William K. Kutler and Gertrude K. Kutler, 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 "Sedaquil" or "Sedaquilin" or any other medicinal or drug preparation of substantially the same formula, whether sold under these names 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 advertisements, directly or indirectly:

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

- (b) Represent that any such product or preparation is a new medical or scientific discovery or achievement;

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 advertisements contain 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 6th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Sedaquil, Inc., a corporation, and William K. Kutler and Gertrude K. Kutler, individually and as officers 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.

Mr. Edward F. Downs for the Commission;
Respondent William J. Kraus for himself.

INITIAL DECISION AS TO RESPONDENT WILLIAM J. KRAUS 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 "Sedaquil" or "Sedaquilin".

On June 27, 1961, prior to the offering of any evidence herein, Respondent William J. Kraus submitted a motion requesting dismissal of the complaint as to him, because, as set forth in an affidavit executed by him and attached to and made a part of his motion to dismiss, he is an attorney at law, and as such organized and for a short time thereafter represented the corporate Respondent herein, but has not represented the respondent corporation since the year 1957, and never at any time had any connection with any aspect of the business operations of that corporation. Counsel supporting the complaint has offered no opposition to Respondent Kraus' motion.

After due consideration of the complaint herein and Respondent Kraus' motion that it be dismissed as to him, the Hearing Examiner is of the opinion that the reasons offered in support of that motion are adequate, and that, in the interests of justice, it should be granted. Therefore,

It is ordered, That the complaint herein, insofar as it relates to Respondent William J. Kraus, be, and the same hereby is, dismissed.

