

Complaint

IN THE MATTER OF

KEMWORTH LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8439. Complaint, June 16, 1961—Decision, Oct. 3, 1961*

Consent order requiring distributors of drugs in Orange, N.J., to cease representing falsely in advertisements in periodicals, by such statements as "Rigid quality control", that they employed an adequate control system for their products.

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 Kemworth Laboratories, Inc., a corporation, and Harold H. Fisher, 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 Kemworth Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 554 Mitchell Street in the City of Orange, State of New Jersey.

Respondent Harold H. Fisher 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 hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution, to drug wholesalers and distributors, of drugs and preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

Among, but not all inclusive of, the said drugs and preparations are those designated as follows:

1. "Chorionic Gonadotropin Lyophilized"
2. "Posterior Pituitary Solution, U.S.P."
3. "Vitamin B-12 Solution"

PAR. 3. Respondents cause their said drugs and preparations, when sold, to be transported from their place of business in the State of New

Jersey 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 drugs and 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 drugs and 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, advertisements inserted in periodicals, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said drugs and preparations by drug wholesalers and distributors; and have disseminated, and caused the dissemination of, advertisements concerning said drugs and 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 drugs and 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 is the following:

Rigid quality control

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 and by implication, that they employ an adequate control system.

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 respondents do not have an adequate control system.

PAR. 8. 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.

Mr. Berryman Davis for the Commission;
Respondents for themselves.

INITIAL DECISION by Abner E. Lipscomb, Hearing Examiner

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

the dissemination of false advertisements with respect to certain of their drugs and preparations, among which are those designated as "Chorionic Gonadotropin Lyophilized," "Posterior Pituitary Solution, U.S.P." and "Vitamin B-12 Solution."

Thereafter, on August 4, 1961, Respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Chief, Division of Food and Drug Advertising, and the Director, of the Commission's Bureau of Deceptive Practices, and thereafter, on August 17, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Kemworth Laboratories, Inc., as a New Jersey corporation, with its office and principal place of business located at 554 Mitchell Street, Orange, New Jersey, and Respondent Harold H. Fisher as an officer of the corporate Respondent, 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 Kemworth Laboratories, Inc., a corporation, and its officers, and Harold H. Fisher, 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 drugs, do forthwith cease and desist, 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:

(a) Uses the term "quality control" or any other term or words of similar import or meaning; or

(b) Represents, directly or indirectly, that Respondents, or any of them, have an adequate control system, or misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs;

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of drugs, which advertisement contains the term, words or 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, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 3rd day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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.

IN THE MATTER OF

PHOENIX PHARMACEUTICAL COMPANY ET AL.

CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATION OF