

Complaint

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IN THE MATTER OF

ROBIN PHARMACAL CORPORATION ET AL.

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

Docket C-215. Complaint, Sept. 10, 1962—Decision, Sept. 10, 1962

Consent order requiring New York City distributors of drug preparations to wholesale and retail druggists and pharmacists to cease advertising falsely in periodicals, letters, etc., that they had "unvarying quality controls" and exercised "constant checkups" which assured "uniform, quality production".

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 Robin Pharmacal Corporation, Sidney Rich, individually and Sidney Rich and Charlotte Rich, 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 Robin Pharmacal Corporation 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 30-30 Northern Boulevard, Long Island City, in the city of New York, State of New York.

Respondent Robin Pharmacal Corporation is a closed corporation, the entire stock of which is owned by Sidney Rich and Charlotte Rich, his wife. Respondents Sidney Rich and Charlotte Rich are sole officers of the corporate respondent and comprise all the members of the board of directors. Sidney Rich formulates, directs and controls 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 have been for more than one year last past, engaged in the sale and distribution to retail druggists and pharmacists, and drug wholesalers and distributors, of preparations containing ingredients which come within the classification of drugs and foods as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

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

1. Aspirin
2. Phenobarbital Tablets
3. dl-Amphetamine Sulfate Tablets
4. Triple Antibiotic Lozenges
5. Digitalis Tablets
6. Cobalamin Tablets
7. Piperazine Citrate Tablets
8. Geriatric Tablets
9. A.P.C. Tablets
10. Dextro-amphetamine Sulfate Tablets
11. Multivitamin Tablets
12. Sodium Pentobarbital Capsules
13. Coricomp Capsules

PAR. 3. Respondents cause their said 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, advertisements inserted in periodicals, letters and other mailing pieces, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations by retail druggists and pharmacists and drug wholesalers and distributors; 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 are the following:

UNVARYING QUALITY CONTROLS

At Robin control is more than a must. Constant check-ups are made not only of production runs but quality checks are made of raw material deliveries. You are assured of uniform, quality production.

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, by stating that they have "unvarying quality controls" and that they exercise "constant checkups" which assure "uniform, quality production", that they employ an adequate control system.

PAR. 7. In truth and in fact respondents do not have an adequate control system. Therefore the aforesaid advertisements set forth and referred to in paragraph 5, above, 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.

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, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Robin Pharmacal Corporation 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 30-30 Northern Boulevard, Long Island City, in the city of New York, State of New York.

Respondents Sidney Rich and Charlotte Rich are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Robin Pharmacal Corporation, a corporation, and its officers, and Sidney Rich, individually, and Sidney Rich and Charlotte Rich, 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 drugs or food, do forthwith cease and desist from 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 terms "unvarying quality control" or "uniform quality production", or any other words or terms of similar import or meaning; or

(b) Represents, directly or indirectly, that respondents 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 or food.

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 of drugs or food, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the terms or representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

D. S. LAHMERS CO., INC., ET AL.

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

Docket C-216. Complaint, Sept. 10, 1962—Decision, Sept. 10, 1962

Consent order requiring Dover, Ohio, sellers of a plastic metal mender designated "Laco Presto" to automotive jobbers for resale to autobody repair shops,

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to cease advertising falsely in magazines and on labels, etc., that the product was non-toxic, and to label containers conspicuously as to dangers attendant on its use.

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 D. S. Lahmers Co., Inc., a corporation, and Don S. Lahmers, 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 D. S. Lahmers Co., 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 at 616 Harger Street, in the city of Dover, State of Ohio.

Respondent Don S. Lahmers 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 for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, a plastic metal mender designated "Laco Presto" to automotive jobbers for resale to autobody repair shops.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product 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 plastic metal mender designated "Laco Presto", respondents have made certain statements and representations in advertisements in magazines of national circulation and on labels, and by other media, of which the following are typical:

non-toxic cream hardener
non-toxic LACO PRESTO

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented, directly or by implication:

- (1) That the cream hardener is nontoxic
- (2) That the plastic metal mender is nontoxic.

PAR. 6. In truth and in fact:

(1) The cream hardener is not nontoxic and may cause itching or skin irritation as it contains benzoyl peroxide, which is a primary irritant and sensitizer to the skin.

(2) The cream hardener must be combined with the putty to make the plastic metal mender and when this is done the product resulting therefrom may cause itching or skin irritation and is not nontoxic under all conditions of use.

Therefore, the statements and representations set forth in paragraph 4 were, and are, false, misleading and deceptive.

PAR. 7. The label on the respondents' cream hardener contains only cautionary statements as to the flammability of the product, as to its being kept out of reach of children and as to the steps to be taken if it is ingested. However, the benzoyl peroxide contained in the cream hardener may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin. The label on the respondents' cream hardener is misleading in that it fails to reveal this material fact with respect to the consequences which may result from the use of the product as directed on the label for the putty. The label on the respondents' putty is misleading in that it fails to reveal the material fact that after it is mixed with the cream hardener the product resulting therefrom may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin.

PAR. 8. 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 plastic metal menders of the same general kind and nature as that sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices and failure to warn the purchasing public on the labels of the product of the dangers attendant to the use of the product have had, and now have, 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 that there is no danger in use of the product and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken beliefs.

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PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the corporation named above, and the respondents named in the caption hereof having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent D. S. Lahmers Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 616 Harger Street, in the city of Dover, State of Ohio.

Respondent Don S. Lahmers is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent D. S. Lahmers Co., Inc., a corporation, and its officers, and respondent Don S. Lahmers, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a plastic metal mender designated "Laco Presto", or any other product of similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

(1) Representing, directly or by implication, that the cream hardener or the metal mender is nontoxic or will not cause itching or skin irritation.

(2) Using a label on the container for the cream hardener which does not set forth in a clear and conspicuous manner the following statements:

CAUTION: Keep away from heat or flame. Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water.

(3) Using a label on the container for the putty which does not set forth in a clear and conspicuous manner the following statements:

"CAUTION: After mixing with cream hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

It is further ordered, That the respondents herein 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 this order.