

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
CONSUMER LABORATORIES, INC., ET AL.

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

Docket 8199. Complaint, Dec. 6, 1960—Decision, Oct. 4, 1962

Order requiring distributors of drug products, with general office in Los Angeles, to cease representing falsely—in newspaper and magazine advertising, by radio and television broadcasts, and otherwise—that their “Oragen” tablets were weight reducing and a new reducing discovery, were made exclusively from oranges and were manufactured by them; and that their caffeine-containing product “Tirend” was a new, rapid invigorator, among other deceptive claims; and to cease using the word “Laboratories” in their trade name.

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 Consumer Laboratories, Inc., a corporation, and A. Richard Diebold, Harold S. Heldfond and Robert D. Jones, individually and as officers of said corporation, and Albert H. Diebold, individually and as director and sole stockholder of said corporation, hereinafter referred to as re-

*The complaint is published as amended by order dated March 30, 1962.

spondents, 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 Consumer Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its general office and place of business located at 8467 Beverly Boulevard, Los Angeles 48, Calif. Said respondent also maintains an office in New York at 375 Park Avenue, New York 22, N.Y.

Respondent A. Richard Diebold is an individual and chairman of the board of directors of the corporate respondent. His address is Toplands Farm, Roxbury, Conn.

Respondent Harold S. Heldfond is an individual and president of the corporate respondent. His address is 1264 Benedict Canon Drive, Beverly Hills, Calif.

Respondent Robert D. Jones is an individual and secretary-treasurer of the corporate respondent. His address is 177 East 94th Street, New York 28, N.Y.

Respondent Albert H. Diebold is an individual and director and sole stockholder of the corporate respondent. His address is Mill Neck, Long Island, N.Y.

The individual respondents named herein formulate, control, direct and approve the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Said corporate respondent was organized under the laws of the State of New York, on or about December 9, 1958. It is the legal successor to the business of a predecessor corporation, Consumer Drug Corporation, an Oregon corporation, engaged, among other things, in the business of the sale and distribution of two products, one sold and distributed under the name "Oragen," and the other sold and distributed under the name "Tirend." Both products contain ingredients which bring them within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

Respondent Consumer Laboratories, Inc., since about January 1959 has acquired the assets and all rights, title and interest to the business of Consumer Drug Corporation, including the marketing of the products, "Oragen" and "Tirend".

Respondent Harold S. Heldfond was president of the predecessor corporation, Consumer Drug Corporation, at the time of the sale of the business to respondent Consumer Laboratories, Inc., and for

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several years prior thereto. Said respondent Heldfond has been president of the corporate respondent Consumer Laboratories, Inc., since its incorporation.

PAR. 3. The designation used by respondents for the product "Oragen" and, according to its label, the formula thereof, and directions for use, are as follows:

Designation: ORAGEN

Formula:

EACH SIX ORAGEN TABLETS PROVIDE:

Pectolex (Trade Mark).....	2.4 Gm. (37.0 grs.)
(Pectin Cellulose Complex with Dried Protopectin Complex, Orange 1.2 Gm.—Methylcellulose 250 CPS 1.2 Gm.)	
Protein Hydrolysate.....	338 mg. (6 grs.)
Ascorbic Acid (Vitamin C).....	18.0 mg.
Niacinamide.....	9.0 mg.
Thiamin Mononitrate (Vitamin B-1).....	0.6 mg.
Riboflavin (Vitamin B-2).....	1.2 mg.
Calcium Pantothenate.....	0.6 mg.
Pyridoxine Hydrochloride (Vitamin B-6).....	0.3 mg.
Iron (from Iron Gluconate).....	3.0 mg.
Calcium (from Dicalcium Phosphate).....	222 mg. ¹
Phosphorous (from Dicalcium Phosphate).....	168 mg. ²
Vitamin B-12 Activity from Colbalamin Concentrate.....	0.6 mcgm.
Milk Powder—Defatted.....	776 mg. (12 grs.)
Artificial Coloring and Flavoring Added.....	

Directions:

As an aid to appetite appeasement, take two or four tablets ½ hour before meals, with at least one full glass of water. If necessary, an additional two to four tablets may be taken before meals, between meals, or at bedtime.

¹ Increased in current formula to 225 mg.

² Increased in current formula to 173.5 mg.

The designation used by respondents for the product "Tirend" and according to its label, the qualitative formula thereof, and directions for use, are as follows:

Contains: Synergex (Brand name for Sodium BI Phosphate and Calcium Phosphate Monobasic), Niacin, Caffeine Alkaloid, Dextrose (Grape Sugar) Thiamine Mono-Nitrate, with Lemon Bioflavonoid Complex for "Vitamin P" activity from tart lemons.

Directions: Adults: one or two tablets as needed. Avoid use too close to bedtime.

PAR. 4. The predecessor corporation, Consumer Drug Corporation, maintained its office and principal place of business in Portland, Oregon, and shipped the products "Oragen" and "Tirend" from its place of business in the State of Oregon to purchasers located in other states, principally in the western part of the United States.

For a period of time after its incorporation, the successor corporation, respondent Consumer Laboratories, Inc., continued its operation from the Portland, Oregon, address of the predecessor company. In or about September 1959, the general offices of the corporate respondent were moved to Los Angeles, California.

PAR. 5. Said respondents, in the course and conduct of the business of the sale and distribution of the products "Oragen" and "Tirend", have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have sold and distributed such products to purchasers thereof in states other than the states of origin of shipment, and, either directly or indirectly caused such products, when sold, to be shipped and transported from the states of origin to purchasers located in other states. There is now, and has been, a constant course and flow of trade and commerce in such products between respondents in the states of origin and purchasers thereof located in other states.

The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said business, respondents, either directly or indirectly, have disseminated, and caused the dissemination of, certain advertisements concerning the said products "Oragen" and "Tirend", 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 other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various states of the United States 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 products; and have disseminated, and caused the dissemination of, advertisements concerning said products 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 products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Among and typical of the statements contained in said advertisements disseminated as hereinabove set forth, and others of the same import not specifically set out herein, are the following:

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(a) re Orogen

Reducing discovery from Oranges. Contains Natural Substances from Citrus Fruits, the result of Pharmaceutical Research by Sunkist Growers. Thousands of overweight persons have quickly and easily lost unsightly fat the new Orogen-way and continued to stay slim and attractive. * * * Lose extra pounds and keep them off with Orogen. A product of Consumer Laboratories, Inc., * * * Orogen makes losing weight as easy as gaining weight.

CLINICS RELEASE EXCITING NEWS ABOUT OROGEN, REDUCING DISCOVERY FROM ORANGES. Consumer Laboratories' Exciting Reducing Aid. Contains Natural Substances from Citrus Fruits, the Result of Pharmaceutical Research by Sunkist Growers. * * * Overeaters, "nervous nibblers"—or any overweight person with flabby midriff, heavy thighs, arms, legs, or other fleshy spots may now safely help lose weight, thanks to the reducing discovery from oranges, Orogen.

The remarkable new reducing discovery from oranges . . . containing a citrus substance. The result of pharmaceutical research by Sunkist growers.

* * * I tried Orogen * * * and here's what happened—I lost 24 pounds in 6 weeks. I honestly think that anyone wanting to reduce * * * should take Orogen like I did.

* * * Do away with unsightly, flabby midriff, heavy arms, thighs and legs . . . recapture the lure of your own true slenderness and charm.

Natures safe, effective answer to unsightly bulges.

Here's exciting news. A reducing discovery from oranges. Yes, from the sunny citrus groves of California science has unlocked the secret of safe reducing Orogen. * * * If you have flabby, heavy arms that embarrass you; thick unsightly legs you can't conceal; embarrassing bulges that can mar your beauty, then try Orogen. Clinical research shows that 88% of those using Orogen lost an average of 18½ pounds and up to 29½ pounds in 10 weeks.

Orogen Tablets—fully guaranteed.

Guaranteed Orogen Tablets.

Get guaranteed Orogen from oranges.

(b) re Tirend

Join the millions who enjoy life with "Tirend". Internal power instantly.

Whenever you feel tired * * * you can have safe pep and energy in just 20 minutes * * * amazing TIREND tablets provide instant power * * * a happy glow of new found exhilaration * * * you can have new energy surging to every part of your body in just 20 minutes.

Tirend tablets will give you instant new pep and energy for a good time all evening long.

Thanks to TIREND the amazing new pep tablet, you can feel wonderful in just 20 minutes.

Whenever you feel really tired out—do you know that you too can feel wonderful in just 20 minutes? Yes, amazing TIREND tablets have been created to provide safe and effective pep almost instantly * * *.

* * * * *

You should have TIREND handy for all those times when you need a quick and lasting lift. Take a TIREND * * * You will feel energy surging to every part of your body in just 20 minutes or you pay nothing.

Thanks to amazing TIREND tablets you can feel a new, invigorating energy—a great new surge of internal power—a happy, glorious feeling of renewed life *within minutes!* * * * and it lasts for hours *without letdown or after effects!*”

Safe Pep and Energy in 20 minutes.

Nowadays when people are bushed * * * half dead from a hard days work or nervous strain and there are important things to be done * * * they take TIREND * * * guaranteed to give instant new pep and energy * * * A surge of internal power to every muscle of the body.

TIREND tablets give you amazing new pep and energy for a good time all evening long.

* * * During World War II, German scientists discovered the amphetamines, which supposedly helped stimulate their race to be “Super-Human” * * * These have been used since then in this country, but they are restricted to doctor’s prescription. Then TIREND was developed in a research institute. Their scientists combined military research during the war with more recent advances in medicine and the result was the wonder-working TIREND formula * * *

Amazing TIREND the new safe pep tablets provide instant internal power.

Laboratory makes available safe new invigorator to give physical and mental “Lift” in minutes.

PAR. 8. Through the use of said advertisements, as referred to in paragraph 7 hereof, relating to the product “ORAGEN”, and other advertisements similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

(1) Respondents’ product “Orogen” has weight reducing properties.

(2) Its use will cause a reduction of weight in overweight persons in specific parts of the body, that is, spot reducing.

(3) Its use will result in the loss of weight of a specific amount in a specified period of time.

(4) “Orogen” is fully guaranteed.

(5) “Orogen” is derived from oranges.

(6) “Orogen” is manufactured by respondent Consumer Laboratories, Inc.

(7) “Orogen” is a new reducing discovery.

(8) “Orogen”, itself, is the result of research by the Pharmaceutical Research Department of Sunkist Growers.

PAR. 9. Through the use of said advertisements, as referred to in paragraph 7 hereof, relating to the product “TIREND”, and other advertisements similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

(1) Respondents’ product “Tirend” is an amazing and wonder-working product.

(2) The use of "Tirend" will provide amazing pep and energy, instantly, within minutes or within 20 minutes.

(3) "Tirend" was developed in a research institute and represents the combined efforts of scientists and military research and recent advances in medicine.

(4) "Tirend" is similar to, and as effective as, the amphetamines.

(5) "Tirend" is guaranteed to give instant new pep and energy.

(6) "Tirend" is a new "invigorator".

(7) "Tirend" will be of benefit in the treatment of all cases of tiredness.*

PAR. 10. The said advertisements and representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Respondents' product "Orogen" has no weight reducing properties in itself. Any weight reduction which may follow its use is caused by a reduced caloric intake.

(2) The use of "Orogen" will not cause a reduction of weight in any specific area of the body, that is, spot reducing.

(3) The use of "Orogen" will not result in the loss of any specific amount of weight for any specified period of time.

(4) The terms and conditions of the guarantee of "Orogen", given by respondents to purchasers, and the manner in which they will perform under such guarantee are not set forth in connection therewith.

(5) "Orogen" contains a number of ingredients which are not derived from oranges.

(6) "Orogen" is not manufactured by respondent Consumer Laboratories, Inc.

(7) "Orogen" is not a new reducing discovery as it has no reducing properties and bulk producing products, such as "Orogen" have been known for many years.

(8) "Orogen" is not the result of research by the Pharmaceutical Research Department, or any other department, of Sunkist Growers.

(9) Respondents' product "Tirend" is not an amazing or wonder-working product. Such benefits that may result from its use come from its caffeine content, which is found in coffee, tea and other drinks, and the benefits obtained from the recommended dosage of one or two tablets will be the same as those obtained by drinking one or two cups of coffee.

*Added by amendment of March 30, 1962.

(10) The benefits afforded by the use of "Tirend" will not be instantaneous or within minutes or within 20 minutes but in a substantially longer period of time, varying in individual cases, and in the case of numerous persons such benefits will not be afforded in less than one hour.

(11) "Tirend" was not developed in a research institute and does not represent the combined efforts of scientists and military research and recent advances in medicine.

(12) "Tirend" is not similar to or as effective as the amphetamines.

(13) The terms and conditions of the guarantee of "Tirend" given to purchasers and the manner in which respondents will perform under such guarantee are not set forth in connection therewith.

(14) "Tirend" is not a new "invigorator" as its effective ingredient for such purpose, namely caffeine, has been known and used for such purpose for many years.

(15) "Tirend" will not be of benefit in the treatment of tiredness caused by disease or tiredness other than that which is of a temporary nature caused by over-exertion or loss of sleep.*

PAR. 11. Respondents, through the use of the word "Laboratories" as a part of the name of the corporate respondent, thereby represent, directly or by implication, that corporate respondent owns or operates a laboratory in connection with its business, which is contrary to the fact.

PAR. 12. 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. Lewis F. Depro and Mr. Berryman Davis for the Commission.
Rogers, Hoge & Hills, by Mr. William L. McGuire, of New York,
N.Y., for respondents.*

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The issue in this proceeding is whether respondents are in violation of Section 5 of the Federal Trade Commission Act through the dissemination of false advertisements concerning certain drug products which they sell in commerce.

The proceeding was initiated by a complaint issued December 6, 1960, and was reassigned to the present examiner on September 21, 1961, for hearing and the issuance of an Initial Decision therein. The matter was heard in part on February 19, 20, and 21, 1961 at New York, New York.

*Added by amendment of March 30, 1962.

On April 16, 1962 respondents filed a motion to withdraw their answer to the complaint, as amended, and to file in lieu thereof a "Substitute Answer" annexed to the motion. Under the "Substitute Answer," respondents admit all the material allegations of fact in the complaint, as amended, except that they deny that respondents A. Richard Diebold and Robert D. Jones, as individuals, are responsible and liable for the acts and practices complained of and deny that respondent Albert H. Diebold is responsible and liable either as an individual or as a stockholder or director of the corporate respondent or otherwise for the acts complained of. Respondents under said "Substitute Answer" waive all intervening procedure and further hearing as to the facts admitted in the substitute answer.

There being no objection to respondents' motion to withdraw their original answer and to file in lieu thereof the "Substitute Answer" annexed thereto, the motion is hereby granted and the answer of respondents to the complaint herein, as amended, is deemed to be the said "Substitute Answer."

On the same date of April 16, 1962, respondent Albert H. Diebold filed a motion for a dismissal of the amended complaint as it relates to him. Also on the same date, respondents A. Richard Diebold and Robert D. Jones filed a motion for a dismissal of the amended complaint as against them as individuals (but not as officers of corporate respondent). The motions were supported by annexed affidavits and by a memorandum of law. The motions were endorsed "No Objection" by counsel supporting the complaint who also entered into a stipulation with respondents for the entry of a proposed order calling for a dismissal of the complaint as to Albert H. Diebold and for dismissals of the complaint against A. Richard Diebold and Robert D. Jones individually. It having appeared that good cause existed for granting of said motions and that the public interest would not be prejudiced thereby, the motions were granted under an order dated May 7, 1962.

By a stipulation dated April 16, 1962, the parties hereto submitted a proposed cease and desist order, which they deem appropriate in the premises, for the consideration of the examiner. The proposed order is adopted and set forth below. The said stipulation and proposed order, not having been filed, will be filed at or prior to the time of the filing of the Initial Decision herein.

The facts in this matter as adduced by the pleadings, stipulations of fact, the testimony, and the documentary evidence are as follows but it should be noted that the facts with respect to Albert H. Diebold are not given as the complaint has been dismissed as to him.

Respondent Consumer Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its general office and place of business located at 8467 Beverly Boulevard, Los Angeles 48, California, and a New York office at 375 Park Avenue, New York 22, New York. Respondent A. Richard Diebold, with address at Toplands Farm, Roxbury, Connecticut, is an individual and chairman of the board of directors of the corporate respondent. Respondent Harold S. Heldfond, with address at 1264 Benedict Canon Drive, Beverly Hills, California, is an individual and president of corporate respondent. Respondent Robert D. Jones, with address at 177 East 94th Street, New York 28, New York, is an individual and secretary-treasurer of the corporate respondent. The individual respondents named above formulate, control, direct, and approve the policies, acts, and practices of the corporate respondent including the acts and practices hereinafter set forth.

Corporate respondent was organized under the laws of the State of New York, on or about December 9, 1958. It is the legal successor to the business of a predecessor corporation, Consumer Drug Corporation, an Oregon corporation, engaged, among other things, in the business of the sale and distribution of two products, one sold and distributed under the name "Oragen," and the other sold and distributed under the name "Tirend." Both products contain ingredients which bring them within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

Corporate respondent since about January 1959 has acquired the assets and all rights, title, and interest to the business of Consumer Drug Corporation, including the marketing of the products, "Oragen" and "Tirend." Respondent Harold S. Heldfond was president of the predecessor corporation, Consumer Drug Corporation, at the time of the sale of the business to corporate respondent and for several years prior thereto. Heldfond has been president of corporate respondent since its incorporation.

The designation used by respondents for the product "Oragen" and, according to its label, the formula thereof, and directions for use, are as follows:

Designation: ORAGEN

Formula:

EACH SIX ORAGEN TABLETS PROVIDE:

Pectolex (Trade Mark).....	2.4 Gm. (37.0 grs.)
(Pectin Cellulose Complex with Dried Protopectin Complex, Orange 1.2 Gm.—Methylcellulose 250 CPS 1.2 Gm.)	
Protein Hydrolysate.....	338 mg. (6 grs.)
Ascorbic Acid (Vitamin C).....	18.0 mg.
Niacinamide.....	9.0 mg.
Thiamin Mononitrate (Vitamin B-1).....	0.6 mg.
Riboflavin (Vitamin B-2).....	1.2 mg.
Calcium Pantothenate.....	0.6 mg.
Pyridoxine Hydrochloride (Vitamin B-6).....	0.3 mg.
Iron (from Iron Gluconate).....	3.0 mg.
Calcium (from Dicalcium Phosphate).....	222 mg. ¹
Phosphorous (from Dicalcium Phosphate).....	168 mg. ²
Vitamin B-12 Activity from Cobalamin Concentrate....	0.6 mcgm.
Milk Powder—Defatted.....	776 mg. (12 grs.)
Artificial Coloring and Flavoring Added.....	-----

Directions:

As an aid to appetite appeasement, take two or four tablets $\frac{1}{2}$ hour before meals, with at least one full glass of water. If necessary, an additional two to four tablets may be taken before meals, between meals, or at bedtime.

¹ Increased in current formula to 225 mg.

² Increased in current formula to 173.5 mg.

The designation used by respondents for the product "Tirend" and according to its label, the qualitative formula thereof, and directions for use, are as follows:

Contains: Synergex (Brand name for Sodium BI Phosphate and Calcium Phosphate Monobasic), Niacin, Caffeine Alkaloid, Dextros (Grape Sugar) Thiamine Mono-Nitrate, with Lemon Bioflavonoid Complex for "Vitamin P" activity from tart lemons.

Directions: Adults: one or two tablets as needed. Avoid use too close to bedtime.

The predecessor corporation, Consumer Drug Corporation, maintained its office and principal place of business in Portland, Oregon, and shipped the products "Oragen" and "Tirend" from its place of business in the State of Oregon to purchasers located in other states, principally in the western part of the United States. For a period

of time after its incorporation, the successor corporation, corporate respondent herein, continued its operations from the Portland, Oregon address of the predecessor company. In or about September 1959, the general offices of the corporate respondent were moved to Los Angeles, California.

The aforementioned respondents, in the course and conduct of the business of the sale and distribution of the products "Oragen" and "Tirend", have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have sold and distributed such products to purchasers thereof in states other than the states of origin of shipment, and, either directly or indirectly, caused such products, when sold to be shipped and transported from the states of origin to purchasers located in other states. There is now, and has been, a constant course and flow of trade and commerce in such products between respondents in the states of origin and purchasers thereof located in other states. The volume of business in such commerce has been and is substantial.

In the course and conduct of their said business, respondents, either directly or indirectly, have disseminated, and caused the dissemination of, certain advertisements concerning the said products "Oragen" and "Tirend", 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 other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States 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 products; and have disseminated, and caused the dissemination of, advertisements concerning said products 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 products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in said advertisements disseminated as hereinabove set forth, and others of the same import not specifically set out herein, are the following:

(a) re Oragen

Reducing discovery from Oranges. Contains Natural Substances from Citrus Fruits, the result of Pharmaceutical Research by Sunkist Growers. Thousands of overweight persons have quickly and easily lost unsightly fat the new Oragen-way and continued to stay slim and attractive. * * * Lose extra pounds and

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keep them off with Oragen. A product of Consumer Laboratories, Inc., * * * Oragen makes losing weight as easy as gaining weight.

CLINICS RELEASE EXCITING NEWS ABOUT ORAGEN, REDUCING DISCOVERY FROM ORANGES. Consumer Laboratories' Exciting Reducing Aid. Contains Natural Substances from Citrus Fruits, the Result of Pharmaceutical Research by Sunkist Growers. * * * Overeaters, "nervous nibblers"—or any overweight person with flabby midriff, heavy thighs, arms, legs, or other fleshy spots may now safely help lose weight, thanks to the reducing discovery from oranges, Oragen.

The remarkable new reducing discovery from oranges . . . containing a citrus substance. The result of pharmaceutical research by Sunkist growers.

* * * I tried Oragen * * * and here's what happened—I lost 24 pounds in 6 weeks. I honestly think that anyone wanting to reduce * * * should take Oragen like I did.

* * * Do away with unsightly, flabby midriff, heavy arms, thighs and legs . . . recapture the lure of your own true slenderness and charm.

Natures safe, effective answer to unsightly bulges.

Here's exciting news. A reducing discovery from oranges. Yes, from the sunny citrus groves of California science has unlocked the secret of safe reducing Oragen. * * * If you have flabby, heavy arms that embarrass you; thick unsightly legs you can't conceal; embarrassing bulges that can mar your beauty, then try Oragen. Clinical research shows that 88% of those using Oragen lost an average of 18% pounds and up to 29½ pounds in 10 weeks.

Oragen Tablets—fully guaranteed.

Guaranteed Oragen Tablets.

Get guaranteed Oragen from oranges.

(b) re Tirend

Join the millions who enjoy life with "Tirend". Internal power instantly.

Whenever you feel tired * * * you can have safe pep and energy in just 20 minutes * * * amazing TIREND tablets provide instant power * * * a happy glow of new found exhilaration * * * you can have new energy surging to every part of your body in just 20 minutes.

Tirend tablets will give you instant new pep and energy for a good time all evening long.

Thanks to TIREND the amazing new pep tablet, you can feel wonderful in just 20 minutes.

Whenever you feel really tired out—do you know that you too can feel wonderful in just 20 minutes? Yes, amazing TIREND tablets have been created to provide safe and effective pep almost instantly * * *.

* * * * *

You should have TIREND handy for all those times when you need a quick and lasting lift. Take a TIREND * * * You will feel energy surging to every part of your body in just 20 minutes or you pay nothing.

Thanks to amazing TIREND tablets you can feel a new, invigorating energy—a great new surge of internal power—a happy, glorious feeling of renewed life *within minutes!* * * * and it lasts for hours *without letdown or after effects!*

Safe Pep and Energy in 20 minutes.

Nowadays when people are bushed * * * half dead from a hard days work or nervous strain and there are important things to be done * * * they take

TIREND * * * guaranteed to give instant new pep and energy * * * A surge of internal power to every muscle of the body.

TIREND tablets give you amazing new pep and energy for a good time all evening long.

* * * During World War II, German scientists discovered the amphetamines, which supposedly helped stimulate their race to be "Super-Human" * * * These have been used since then in this country, but they are restricted to doctor's prescription. Then TIREND was developed in a research institute. Their scientists combined military research during the war with more recent advances in medicine and the result was the wonder-working TIREND formula * * *

Amazing TIREND the new safe pep tablets provide instant internal power.

Laboratory makes available safe new invigorator to give physical and mental "Lift" in minutes.

Through the use of the advertisements referred to above relating to the product "Oragen", and other advertisements similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

- (1) Respondents' product "Oragen" has weight reducing properties.
- (2) Its use will cause a reduction of weight in overweight persons in specific parts of the body, that is, spot reducing.
- (3) Its use will result in the loss of weight of a specific amount in a specified period of time.
- (4) "Oragen" is fully guaranteed.
- (5) "Oragen" is derived from oranges.
- (6) "Oragen" is manufactured by respondent Consumer Laboratories, Inc.
- (7) "Oragen" is a new reducing discovery.
- (8) "Oragen", itself, is the result of research by the Pharmaceutical Research Department of Sunkist Growers.

Through the use of the aforementioned advertisements, relating to the product "TIREND", and other advertisements similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

- (1) Respondents' product "Tirend" is an amazing and wonder-working product.
- (2) The use of "Tirend" will provide amazing pep and energy, instantly, within minutes or within 20 minutes.
- (3) "Tirend" was developed in a research institute and represents the combined efforts of scientists and military research and recent advances in medicine.
- (4) "Tirend" is similar to, and as effective as, the amphetamines.
- (5) "Tirend" is guaranteed to give instant new pep and energy.
- (6) "Tirend" is a new "invigorator".

(7) "Tirend" will be of benefit in the treatment of all cases of tiredness.

The aforementioned advertisements and representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Respondents' product "Orogen" has no weight reducing properties in itself. Any weight reduction which may follow its use is caused by a reduced caloric intake.

(2) The use of "Orogen" will not cause a reduction of weight in any specific area of the body, that is, spot reducing.

(3) The use of "Orogen" will not result in the loss of any specific amount of weight for any specified period of time.

(4) The terms and conditions of the guarantee of "Orogen", given by respondents to purchasers, and the manner in which they will perform under such guarantee are not set forth in connection therewith.

(5) "Orogen" contains a number of ingredients which are not derived from oranges.

(6) "Orogen" is not manufactured by respondent Consumer Laboratories, Inc.

(7) "Orogen" is not a new reducing discovery as it has no reducing properties and bulk producing products, such as "Orogen" have been known for many years.

(8) "Orogen" is not the result of research by the Pharmaceutical Research Department, or any other department, of Sunkist Growers.

(9) Respondents' product "Tirend" is not an amazing or wonder-working product. Such benefits that may result from its use come from its caffeine content, which is found in coffee, tea, and other drinks, and the benefits obtained from the recommended dosage of one or two tablets will be the same as those obtained by drinking one or two cups of coffee.

(10) The benefits afforded by the use of "Tirend" will not be instantaneous or within minutes or within 20 minutes but in a substantially longer period of time, varying in individual cases, and in the case of numerous persons such benefits will not be afforded in less than one hour.

(11) "Tirend" was not developed in a research institute and does not represent the combined efforts of scientists and military research and recent advances in medicine.

(12) "Tirend" is not similar to or as effective as the amphetamines.

(13) The terms and conditions of the guarantee of "Tirend" given to purchasers and the manner in which respondents will perform under such guarantee are not set forth in connection therewith.

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(14) "Tirend" is not a new "invigorator" as its effective ingredient for such purpose, namely caffeine, has been known and used for such purpose for many years.

(15) "Tirend" will not be of benefit in the treatment of tiredness caused by disease or tiredness other than that which is of a temporary nature caused by over-exertion or loss of sleep.

Respondents, through the use of the word "Laboratories" as a part of the name of the corporate respondent, thereby represent, directly or by implication, that corporate respondent owns or operates a laboratory in connection with its business, which is contrary to the fact.

CONCLUSIONS

On the basis of the foregoing evidentiary findings of fact, the examiner concludes that the dissemination by respondents (remaining after the aforementioned dismissals as to some of the original 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.

ORDER

It is ordered, That respondents, Consumer Laboratories, Inc., a corporation, and its officers, and Harold S. Heldfond, individually and as an officer of said corporation, and A. Richard Diebold and Robert D. Jones as officers 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 the products designated "Oragen" and "Tirend," or any other product of substantially similar composition, or possessing substantially similar properties, whether sold under said names, or any other name, 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. Represents, directly or indirectly, that:

- (1) "Oragen" is a new reducing discovery or that it has any weight reducing properties in itself;
- (2) Any specific predetermined weight reduction can be achieved by using respondents' product "Oragen" for a prescribed period of time;
- (3) "Oragen" will cause weight loss from specific parts of the body or is effective in spot reducing;

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(4) The product "Orogen" or the product "Tirend" is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly set forth;

(5) The ingredients in "Orogen" are derived exclusively from oranges;

(6) "Orogen," itself, is the result of research by a department or division of Sunkist Growers;

(7) The product "Orogen" or the product "Tirend" is manufactured by Consumer Laboratories, Inc., or that respondents manufacture any other product when they do not own, operate or control the plant in which the products are manufactured;

(8) Consumer Laboratories, Inc., owns or operates a laboratory;

(9) The benefits afforded by the use of "Tirend" will occur in less than one hour;

(10) "Tirend" was developed by a research institute or that it represents the combined efforts of scientists and military research and recent advances in medicine; or misrepresenting in any manner the origin or development of said product;

(11) "Tirend" is similar to, or as effective as, the amphetamines;

(12) "Tirend" is a new invigorator or any other kind of a new product;

(13) "Tirend" will be of benefit in the treatment of tiredness unless limited to tiredness of a temporary nature caused by overexertion or loss of sleep.

B. Uses such words as "amazing," "wonder-working," or any other words or terms of the same import, to describe "Tirend" or its properties.

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 said products, which advertisement contains any of the representations prohibited in Paragraphs 1.A. and 1.B. hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Albert H. Diebold as an individual, director, and sole stockholder, and as to respondents A. Richard Diebold and Robert D. Jones as individuals.

FINAL ORDER

Respondents having filed, under § 4.22(c) of the Commission's Rules of Practice, exceptions to the proposed final order in this proceeding, reasons in support thereof and a proposed alternative form of order, and counsel supporting the complaint having filed a reply opposing said exceptions; and

The Commission having considered said exceptions and having concluded that the grounds set forth in support thereof do not justify modification of the proposed final order, and that said order should be adopted and entered as the final order of the Commission:

It is ordered, That respondents' exceptions to the proposed final order be, and they hereby are, denied.

It is further ordered, That the initial decision be modified by striking therefrom the sentence beginning on line 13 with the words "The individual respondents" and ending on line 16 with the words "set forth" on page 919 thereof and substituting the following:

The individual respondent Harold S. Heldfond formulates, controls, directs, and approves the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The individual respondent Albert H. Diebold is no longer a director of the corporate respondent, having resigned as such on March 31, 1961, for reasons of health. He has virtually retired from all business activities and has not been engaged in the management of the corporate respondent for several years. The individual respondent A. Richard Diebold is Chairman of the Board of the corporate respondent. However, only a small portion of his time, approximately ten percent, is devoted to corporate respondent, the remainder being devoted to other business enterprises and to charitable organizations. He did not originate or formulate the advertising copy, claims or representations challenged in the complaint. The individual respondent Robert D. Jones is Secretary-Treasurer of corporate respondent. He is a member of the bar of the State of New York, with his office located in New York City. He supervises the accounting, financial, tax, and legal work for corporate respondent. His responsibilities do not include the writing or placing of advertising copy nor did he originate or formulate the advertising claims hereinafter set forth. On the basis of the foregoing, the order herein will provide for dismissal of the complaint as to Albert H. Diebold and for dismissal as to A. Richard Diebold and Robert D. Jones in their individual capacities but not in their official capacities.

It is further ordered, That the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents, Consumer Laboratories, Inc., a corporation, and its officers, and Harold S. Heldfond, individually and as an officer of said corporation, and A. Richard Diebold and Robert D. Jones as officers 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 the products designated "Oragen" and "Tirend," or any other product of substantially similar composition, or possessing substantially similar properties, whether sold under said names, or any other name, 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. Represents, directly or indirectly, that:

(1) "Oragen" is a new reducing discovery or that it has any weight reducing properties in itself;

(2) Any specific predetermined weight reduction can be achieved by using respondents' product "Oragen" for a prescribed period of time;

(3) "Oragen" will cause weight loss from specific parts of the body or is effective in spot reducing;

(4) The product "Oragen" or the product "Tirend" is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly set forth;

(5) The ingredients in "Oragen" are derived exclusively from oranges;

(6) "Oragen" itself, is the result of research by a department or division of Sunkist Growers;

(7) The product "Oragen" or the product "Tirend" is manufactured by Consumer Laboratories, Inc., or that respondents manufacture any other product when they do not own, operate or control the plant in which the products are manufactured;

(8) The benefits afforded by the use of "Tirend" will occur in less than one hour;

(9) "Tirend" was developed by a research institute or that it represents the combined efforts of scientists and military research and recent advances in medicine; or

misrepresenting in any manner the origin or development of said product;

(10) "Tirend" is similar to, or as effective as, the amphetamines;

(11) "Tirend" is a new invigorator or any other kind of a new product;

(12) "Tirend" will be of benefit in the treatment of tiredness unless limited to tiredness of a temporary nature caused by overexertion or loss of sleep.

B. Uses such words as "amazing," "wonder-working," or any other words or terms of the same import, to describe "Tirend" or its properties.

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 said products, which advertisement contains any of the representations prohibited in Paragraphs 1.A. and 1.B. hereof.

It is further ordered, That respondents, Consumer Laboratories, Inc., a corporation, and its officers, and Harold S. Heldfond, individually and as an officer of said corporation, and A. Richard Diebold and Robert D. Jones, as officers 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 the products designated "Oragen" and "Tirend," or any other preparation or product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Laboratories", or any other word of the same import or meaning as a part of their corporate name, or representing in any other manner that respondents own, operate or control a laboratory.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Albert H. Diebold as an individual, director, and sole stockholder, and as to respondents A. Richard Diebold and Robert D. Jones as individuals.

It is further ordered, That the initial decision as modified herein be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That Consumer Laboratories, Inc., a corporation, and A. Richard Diebold and Robert D. Jones as officers of said corporation, and Harold S. Heldfond 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 as set forth herein.

Complaint

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IN THE MATTER OF

AMERICAN RADIATOR AND STANDARD SANITARY
CORPORATIONORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 7835. Complaint, Mar. 21, 1960—Decision, Oct. 5, 1962*

Order dismissing, as not sustained by the evidence, complaint charging a manufacturer of heating, cooling, plumbing, and kitchen products, among others, with violating Section 5 of the Federal Trade Commission Act through the wrongful inducement of discriminatory allowances from its suppliers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it would be to the interest of the public, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. American Radiator and Standard Sanitary Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 40 West 40th Street, New York, N.Y.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of many diversified products, including heating, cooling, plumbing and kitchen products. Respondent sells and distributes said products for use and resale both through independent wholesalers and through its own Amstan Supply Division. Said Amstan Supply Division, operating through approximately seventy-five wholesaling branches, sells and distributes both respondent's said products and similar and related products purchased from other manufacturers, hereinafter referred to as respondent's "suppliers". Through said Amstan Supply Division, respondent is in substantial competition with many other corporations, persons, firms, and partnerships in the purchase, sale and distribution of heating, cooling, plumbing and kitchen products and similar and related products.

Respondent's sales are substantial, being approximately \$500,000,000 annually.