

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.

By the Commission, Commissioner Elman not participating.

IN THE MATTER OF
COVE VITAMIN AND PHARMACEUTICAL, INC., ET AL.

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

Docket C-572. Complaint, Sept. 6, 1963—Decision, Sept. 6, 1963

Consent order requiring two associated corporate distributors of safflower oil capsules in Glen Cove, N. Y., to cease making a variety of false representations in a book "Calories Don't Count", which they promoted jointly with the publishers, and in newspaper and magazine advertising, with regard to the importance of polyunsaturated fats in the diet and their effectiveness in reducing etc., as in the order below in detail set forth.

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

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Trade Commission having reason to believe that Cove Vitamin and Pharmaceutical, Inc., a corporation, and Harry Bobley, Edward Bobley and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and Kenneth Beirn, individually and 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 Cove Vitamin and Pharmaceutical, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Its address is Bobley Building, Glen Cove, New York.

Respondents Harry Bobley, Edward Bobley and Peter M. Bobley are officers of respondent Cove Vitamin Pharmaceutical, Inc. They each participate in the formulation, direction and control of the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as respondent Cove Vitamin and Pharmaceutical, Inc.

Respondent CDC Pharmaceutical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York. This respondent has offices and its principal place of business at Bobley Building, Glen Cove, New York. It is a subsidiary of Cove Vitamin and Pharmaceutical, Inc.

Respondent Kenneth Beirn is an individual whose address is 270 Park Avenue, city of New York, State of New York.

PAR. 2. Respondents Cove Vitamin and Pharmaceutical, Inc., CDC Pharmaceutical Corporation, Harry Bobley, Edward Bobley and Peter M. Bobley have been engaged in the promotion, sale and distribution of safflower oil capsules designated "CDC Capsules" and have participated in the acts and practices set forth below. These respondents have caused said capsules when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. These respondents have maintained, at all times material to this complaint, a substantial course of trade in said capsules in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Kenneth Beirn participated in the promotion, sale and distribution of the book entitled "Calories Don't Count" and the safflower oil capsules designated "CDC Capsules" and has participated in the acts and practices herein described.

PAR. 3. Simon and Schuster, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Jason C. Berger an officer of Simon and Schuster, Inc., actively participates in the formulation, direction and control of the policies, acts and practices of said corporation including the acts and practices hereinafter set forth.

Richard L. Grossman was formerly an officer of Simon and Schuster, Inc., during which time he actively participated in the formulation, direction and control of the policies, acts and practices of said corporation in connection with the acts and practices as hereinafter set forth.

Schwab, Beatty and Porter, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

Simon and Schuster, Inc., and Jason C. Berger are now, and for some time last past have been, engaged in the publication, promotion, sale and distribution of a book entitled "Calories Don't Count" by Herman Taller. They cause said book when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. They maintain, and at all times mentioned herein have maintained, a substantial course of trade in said book in commerce, as "commerce" is defined in the Federal Trade Commission Act. Richard L. Grossman has engaged in the business described herein and has participated in the acts and practices herein described.

Schwab, Beatty and Porter, Inc., is now and at all times mentioned herein has been, the advertising agency of Simon and Schuster, Inc., and now prepares and places, and has prepared and placed, for publication the advertising and promotional material, referred to herein, to induce the sale of the aforesaid book, and through such means has promoted the sale and distribution of Safflower Oil Capsules.

Herman Taller, an individual, is a physician licensed and practicing in the State of New York.

PAR. 4. In the course and conduct of the business of jointly promoting, selling and distributing the book "Calories Don't Count" and the safflower oil capsules, CDC Capsules, all respondents named herein, and the corporations and individuals referred to in Paragraph 3 herein, have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of books and safflower oil capsules.

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PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase in commerce of said book and of safflower oil capsules, respondents and the corporations and individuals referred to in Paragraph 3 herein have made certain statements and representations with respect thereto in said book and in other advertisements inserted in newspapers and magazines, and in other promotional material, having a general circulation throughout the various States of the United States and in the District of Columbia.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements and other promotional material disseminated as herein set forth are the following:

News about a revolutionary reducing plan, based on a new biochemical discovery * * *.

UNBELIEVABLE—but true! You need to eat fat if you are to be slim. It isn't how many calories you consume that matters — but what kind of calories. The inclusion of polyunsaturated fatty acids in your diet is the essential step toward loosening the body's long-stored fat. It is the key to your losing only excess fat rather than vital body tissue.

In this just-published book, CALORIES DON'T COUNT, Dr. Herman Taller explains the principles behind this new understanding of the body's chemistry — and tells you in full detail:

1. How to eat three full meals a day and lose weight in the safest way possible.

* * * * *

4. How this radical new way of losing weight is linked with a low cholesterol count, better skin condition, and resistance to colds.

5. Why you may eat fried foods every day and keep slim — what kind of fats to fry them in.

* * * * *

After painstaking research he put his program into practice on a group of 93 problem dieters with extraordinary success. Today patients from all over the country come to Dr. Taller for treatment. And his principles have won ever widening interest in the medical field. In the preface to the book he writes:

"The concept this book advances is revolutionary. Perhaps all I need say in support of my nutrition principle is that it works. It has been tested in medical laboratories and among large numbers of patients. There have been no failures, nor can there be any when the principle is properly applied. For it is based on new knowledge — a medical breakthrough."

* * * * *

How this radical new way of losing weight is linked to a low cholesterol count, better skin condition and resistance to colds and sinus trouble.

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In addition, you must supplement your diet further in unsaturated fats. In all, you should take three ounces of highly unsaturated vegetable oil and eat two ounces of margarine every day * * *.

* * * * *

The key substance in vegetable oils is linoleic acid, an essential, unsaturated fatty acid. The oils with the greatest quantity of linoleic acid are most valuable in conquering obesity and in keeping cholesterol level low * * *.

* * * * *

Clearly, safflower oil is the most valuable by far. * * * Safflower oil is becoming more easily available, both in liquid form and in capsules obtainable at drug and department stores or through such mail-order sources as Cove Pharmaceuticals, New York.

PAR. 7. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents and the corporations and individuals referred to in Paragraph 3 herein have represented, directly and by implication:

1. That the dietary principles expounded in said book are new, that they are based on a new discovery, new knowledge and new understanding, and that they constitute a medical breakthrough;
2. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet;
3. That the book truthfully reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, and that polyunsaturated fatty acids are more effective in a reducing diet than are other fats;
4. That said book enables a person to improve the condition of his skin and increase his resistance to colds and sinus trouble;
5. That all other reducing programs and principles will cause loss of vital body tissue or are less safe than those set forth in said book;
6. That the book truthfully reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight;
7. That calories are not important in relation to obesity, and that a person can reduce his body weight, regardless of the number of calories consumed, by following the principles set forth in the book sold under the title "Calories Don't Count";
8. That safflower oil capsules will be of substantial value as a part of diet in reducing body weight.

PAR. 8. In truth and in fact:

1. The dietary principles expounded in said book are not new. They are not based upon a new discovery, new knowledge or new understanding and do not constitute a medical breakthrough;
2. A person, by the inclusion of polyunsaturated fatty acids in his diet, will not be able thereby to loosen long-stored fat;

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3. It is not an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that they are more effective in a reducing diet than are other fats;

4. Said book will not enable a person to improve the condition of his skin or increase his resistance to colds or sinus trouble;

5. Many reducing programs and principles other than those of respondents' and the corporations and individuals referred to in Paragraph 3 herein when properly administered, will not cause loss of vital body tissue and are no less safe than the reducing programs and principles of the respondents and the corporations and the individuals referred to in Paragraph 3 herein;

6. It is not an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. Calories are important in their relation to obesity, and the number of calories consumed by the individual is important to, and directly related to, the reduction of his body's weight. Contrary to representations of the respondents and the corporations and individuals referred to in Paragraph 3 herein a person cannot, by following the principles set forth in the book "Calories Don't Count", reduce his body weight without regard to the number of calories consumed;

8. Safflower oil capsules are not of substantial value as a part of a diet in the reduction of body weight.

Therefore, the statements and representations as set forth in Paragraph 6 and 7 were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their businesses, the respondents and the corporations and individuals referred to in Paragraph 3 herein have entered into understandings, agreements and planned courses of action to mislead and deceive the public into believing that the reducing plans outlined in said book, including the use of safflower oil capsules, would produce the results in bringing about the reduction in body weight specified and implied through representations contained in said book. Thus, through their understandings, agreements, and planned courses of action, respondents and the corporations and individuals referred to in Paragraph 3 herein conceived the scheme to make the book entitled "Calories Don't Count" an advertising material which would promote the sale of safflower oil capsules. In doing so the respondents and the corporations and individuals referred to in Paragraph 3 herein and each of them acted to induce members of the public to purchase said book and also to purchase safflower oil capsules in commerce.

Pursuant to the said understandings, agreements, arrangements, planned courses of action, combination and conspiracy and in further-

ance thereof, respondents and the corporations and individuals referred to in Paragraph 3 herein have acted in concert and in cooperation in the performance of the things hereinabove alleged and in order to assist them in the effectuation of their scheme, respondents and the corporations and individuals referred to in Paragraph 3 herein performed the following acts and practices.

1. Dr. Herman Taller, the nominal author of "Calories Don't Count", presented a draft of the manuscript of his original version of the aforesaid book to the publisher, Simon and Schuster, Inc. Mr. Berger and his associates concluded that in order to further the schemes of the respondents and the corporations and individuals referred to in Paragraph 3 herein the book should be revised by some professional writer. Therefore, arrangements were made with Roger Kahn, a sports writer, to revise the manuscript. When the revision was completed, Mr. Kahn had made substantial contributions to the content of the book. Mr. Kahn also conceived the title for the book "Calories Don't Count".

2. During the period of time that Kahn was rewriting the book, respondents and the corporations and individuals referred to in Paragraph 3 herein devised the scheme to make the book a piece of advertising material which would promote the sale of safflower oil capsules. That was done. Respondents and the corporations and individuals referred to in Paragraph 3 herein thereupon embarked on a joint sales campaign for advertising the book "Calories Don't Count" and of advertising through it the sale and distribution of safflower oil capsules. It was their hope that they would develop through the advertising contained in the book a market for the safflower oil capsules. In this way it was intended that the owners of Cove Vitamin and the officials of Simon and Schuster would profit at the expense of deceiving and misleading the public through the misleading and false statements contained in the book.

3. By agreement and general understandings, respondents and the corporation and individuals referred to in Paragraph 3 herein made it the primary responsibility of Richard L. Grossman and the advertising agency, Schwab, Beatty and Porter, Inc., to prepare, disseminate and make effective various forms of advertising to induce the sale and distribution of the book "Calories Don't Count", and through it the advertising, sale and distribution of safflower oil capsules.

4. This scheme and planned course of action of respondents and the corporations, and individuals referred to in Paragraph 3 herein went so much further in deceiving and misleading the public than the original version of the manuscript prepared by Dr. Taller that he took the position privately, but did not inform the public that the portion

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of the book "Calories Don't Count" which referred to safflower oil capsules was without justification.

5. By arrangement of respondents and the corporations and individuals referred to in Paragraph 3 herein CDC Pharmaceuticals Corporation planned to, and did, use the title of the book "Calories Don't Count", pictures of its cover, and abstracts from its pages for use in the promotion of safflower oil capsules.

6. Respondents and the corporations and individuals referred to in Paragraph 3 herein carried out newspaper campaigns and other advertising and promotional activities promoting the sale of the book "Calories Don't Count" and the sale and distribution of safflower oil capsules.

PAR. 10. Each of the respondents and the corporations and individuals referred to in Paragraph 3 herein have acted to promote the dissemination and circulation of false and misleading advertising, including the publication, sale and distribution of the advertising material contained in the book "Calories Don't Count" and the advertising material appearing in newspapers, magazines, counter displays and in other forms, to induce not only the sale and distribution of the book "Calories Don't Count" but also of safflower oil capsules. Among the acts thus committed were those involving the advertising hereinafter alleged.

1. Two advertisements side-by-side in New York Times, Sunday, December 17, 1961.

(a) for the book "Calories Don't Count"; "Read the book the whole country's talking about CALORIES DON'T COUNT by Dr. Herman Taller."

(b) for "CDC Capsules": "Crash! Go Crash Diets . . ." "Eat and lose weight' says Dr. Herman Taller, prominent N. Y. Physician. A Revolutionary new way to lose pounds, inch by inch, while eating and enjoying three square meals a day supplemented by CDC Capsules * * *."

2. Counter display picturing bottle of "CDC capsules" and cover of book "Calories Don't Count":

We've Got It!
CDC
Capsules
Calories Don't Count
Weight Control Program.

PAR. 11. The use by the respondents of the foregoing false, misleading and deceptive statements has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were

and are, true and into the purchase of substantial quantities of the aforesaid book and safflower oil capsules by reason thereof.

PAR. 12. The aforesaid acts and practices of respondents, including the aforesaid understanding agreement, and planned course of action, as herein alleged, were, and are all to the prejudice and injury of the public and of 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 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 Cove Vitamin and Pharmaceutical, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located in the Bobley Building, Glen Cove, New York.

Respondents Harry Bobley, Edward Bobley and Peter M. Bobley are officers of said corporation, and their address is the same as that of said corporation.

Respondent CDC Pharmaceutical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located in the Bobley Building, Glen Cove, New York.

Respondent Kenneth Beirn is an individual whose address is 270 Park Avenue, city of New York, State of New York.

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 Cove Vitamin and Pharmaceutical, Inc., a corporation, and its officers, and Harry Bobley, Edward Bobley, and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and its officers, and Kenneth Beirn, individually, 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 a book entitled "Calories Don't Count", or any other book or books of the same or approximately the same content, material or principles, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

- a. That the dietary principles expounded in this book are new, are based on a new discovery, are based on new knowledge or understanding, or constitute a medical breakthrough.
- b. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet.
- c. That the book reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that polyunsaturated fatty acids are more effective in a reducing diet than are other fats.
- d. That said book enables a person to improve the condition of his skin or his resistance to colds or sinus trouble.
- e. That other reducing principles and programs will cause loss of vital body tissue or are less safe than those set forth in said book.
- f. That the book reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight.
- g. That safflower oil in capsules or in any other form, or any other preparation of substantially the same ingredients is of substantial value as a part of a diet for the reduction of body weight.

2. The use in advertising of the title "Calories Don't Count", or representing in any other manner in advertising or promotional material, directly or by implication, that a person can reduce body weight regardless of the number of calories consumed by following the principles set forth in said book; provided, however, that any advertising or listing of the book which contains only the title and names of the author and publisher without any reference to the qualifications of the author, and which makes no claims concerning the efficacy of the dietary principles of the book shall not be prohibited hereby.

It is further ordered, That Cove Vitamin and Pharmaceutical, Inc., a corporation, and its officers, and Harry Bobley, Edward Bobley, and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and its officers, and Kenneth Beirn, individually, 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 a book entitled "Calories Don't Count", or any other book or books or in connection with the offering for sale, sale and distribution of safflower oil capsules or any other product or products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Entering into, continuing, cooperating in or carrying out any planned course of action, understanding, agreement or combination between any of said respondents and any other respondent or respondents in the instant case or between said respondents, or any of them, and any others not parties hereto, to engage in:

a. Misrepresenting by any means or in any manner in connection with the advertising, offering for sale, sale or distribution of safflower oil capsules or any other product offered as a source of polyunsaturated fatty acids, the quality or merits of said products, or advertising, offering for sale, selling or distributing said products with the effect, purpose or intent to deceive, to mislead, or to make any false claims concerning the quality or merits of said product or products.

b. Publishing, participating in, or causing the publication of a book without clearly and conspicuously labeling same as an advertisement or otherwise clearly and conspicuously disclosing in the book and on its dust jacket, or on its cover if there be no dust jacket, or by its title that it is

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published in cooperation or in association with or by a supplier or associated group of suppliers of a service or commercial product mentioned or referred to in the book, the identity of such supplier or group and the identity of such service or product, when an objective of such publisher is the substantial use of the book as a merchandising tool for such service or commercial product, or an accord is present between the publisher and the supplier or associated group of suppliers which contemplates substantial use of the book as such merchandising tool.

c. Advertising any book which the respondent knows or reasonably should know is required by the preceding subparagraph (b) to contain a disclosure, without making substantially the same disclosure, in such advertising for said book as is required by the said preceding subparagraph (b).

2. Individually engaging in, doing, or performing any act, practice, or thing prohibited in the immediately foregoing provisions 1(a), (b) or (c) of this order.

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.