

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
VITAMIN INDUSTRIES, INC., ET AL.

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

Docket C-601. Complaint, Sept. 23, 1963—Decision, Sept. 23, 1963

Consent order requiring distributors of three vitamin preparations in Omaha, Nebr., to cease misrepresenting the therapeutic and protective qualities of

their said products in advertising in newspapers and by radio and television broadcasts, etc., as in the order below in detail set out.

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 Vitamin Industries, Inc., a corporation, and Joseph L. Zweiback, 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 Vitamin Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska with its principal office and place of business at 1511 Davenport Street, Omaha, Nebraska.

Respondent Joseph L. Zweiback is an officer of the corporate respondent. His address is the same as that of the corporate respondent. He formulates, controls, directs and approves the policies, acts and practices of the corporate respondent including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of various preparations containing ingredients which come within the classification of foods, drugs and cosmetics as the terms "food", "drug", and "cosmetic" are defined in the Federal Trade Commission Act.

The designations used by respondents for certain of their said various preparations, the formulae thereof and directions for use are as follows:

I. *Designation*: Guardian 12 Plus Vitamins.

Formula: Each single capsule contains: Vitamin A—5,000 USP Units; Vitamin D—1,000 USP Units; Vitamin B₁—3 Mg.; Vitamin B₂—3 Mg.; Vitamin B₆—0.25 Mg.; Calcium Pantothenate—1 Mg.; Vitamin C—50 Mg.; Nicotinamide—18 Mg.; Para-Amino Benzoic Acid—1 Mg.; Vitamin E—1 Int. Unit; Vitamin B₁₂—USP Cobalamin Conc. 2 Mcg.; Rutin—1 Mg.; Biotin—1.5 Mcg.; Menadione—0.5 Mg.; Lemon Bioflavonoid Complex—12 Mg.

Directions: One to three capsules as a dietary supplement.

II. *Designation*: Guardian A/D/E PLEX

Formula: Guardian A/D/E Plex consists of a combination of two different capsules, one designated an "amber" capsule, the other a "D/E Plex" capsule.

A. Each amber capsule contains: Vitamin A—5,000 USP Units; Vitamin D—850 USP Units.

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- B. Each D/E Plex capsule contains: Vitamin B₁—3.5 Mg.; Vitamin B₂—2.5 Mg.; Vitamin C—65 Mg.; Niacinamide—25 Mg.; Calcium Pantothenate—1 Mg.; Vitamin D—1,500 USP Units; Vitamin B₆—100 Mcg.; Mixed Tocopherols—10 Mg.

Directions: Adult Dosage: 3 of each capsule daily as a dietary supplement.

III. *Designation:* Cal Plex F Vitamins.

Formula: Cal Plex F Vitamins consists of a combination of capsules and tablets, one designated "No. 1 capsule", the other "No. 2 tablet." The capsules and tablets are bottled separately.

- A. Each No. 1 capsule contains: Free unsaturated fatty acids of Flaxseed Oil principally linolenic and linoleic—168 Mg.

- B. Each No. 2 tablet contains: Vitamin B₁—1.5 Mg.; Vitamin B₂—3 Mg.; Vitamin B₆—0.1 Mg.; Niacinamide—10 Mg.; Para-Amino Benzoic Acid—10 Mg.; Calcium Pantothenate—35 Mg.

Directions: One capsule each morning. One tablet each day after breakfast as a dietary supplement.

PAR. 3. Respondents cause their said preparations, when sold, to be transported from their place of business in the State of Nebraska to purchasers located in various other States of the United States. 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 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 broadcast across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; 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 contained in said advertisements, disseminated as hereinabove set forth, with respect

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to respondents' preparation designated "Guardian 12 Plus Vitamins", are the following:

Many authorities say that Guardian B₁₂ formula is the most important development in the Vitamin Field. It helps build new, rich blood; it helps give strength and energy from your food intake. Thousands of friends here in our listening area testify to the fact that the Guardian 12 Plus Vitamins formula gives them protection against colds, virus infections and certain types of flu. (Radio)

MORE PEP IN '60 * * * RESIST INFECTIONS * * * Perfect family protection * * * America's foremost complete formula vitamin combination for the whole family * * * PEP-ENERGY-VIGOR. (Newspapers)

PAR. 6. Through the use of said advertisements and others similar thereto, not specifically set out herein, respondents have represented and are now representing directly and by implication that "Guardian 12 Plus Vitamins" will be of benefit in the treatment or relief of a lack of pep, vigor and energy, and that said preparation will be of benefit in affording protection against colds, virus infections and certain types of influenza.

PAR. 7. In truth and in fact Guardian 12 Plus Vitamins will not be of benefit in the treatment or relief of a lack of pep, vigor or energy except in a small minority of persons whose lack of pep, vigor or energy is due to an established or existing deficiency of Vitamin B₁, Vitamin B₂, Vitamin C or Nicotinamide, nor will said preparation be of benefit in affording protection against, colds, virus infections, or any type of influenza.

Therefore, the 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.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest, directly and by implication, to persons of both sexes and all ages who experience a lack of pep, vigor or energy that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the aforementioned preparation. In the light of such statements and representations, said advertisements are misleading in material respects and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience a lack of pep, vigor or energy, such symptoms are not caused by an established or existing deficiency of one or more of the nutrients

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provided by Guardian 12 Plus Vitamins, and that in such persons the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in the said advertisements disseminated as hereinabove set forth, with respect to respondents' "Guardian A/D/E Plex" are the following:

You friends who have symptoms of arthritis or rheumatism, and other aches and pains, and have tried so many methods and remedies to no avail, you are the ones who will bless the day you heard about the famous A/D/E Plex specially formulated vitamin compound. Nutritional problems have become serious through the years and if your arthritis or rheumatism stems from a vitamin deficiency, I urge you to try this formula * * *. This formula is being taken by thousands of people who order and re-order, testifying to the effectiveness of these vitamins. (Radio)

The A/D/E Plex Vitamin formula is an all-vitamin, especially formulated compound designed specially to overcome vitamin deficiencies so often found in people suffering from arthritis and rheumatism * * *. It contains no dangerous drugs or chemicals, and does not interfere or have anything to do with any other medicine. It has been tested by countless thousands of people who order and re-order and also recommend them to others. (Radio)

PAR. 9. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication that, inasmuch as arthritis and rheumatism may be caused by vitamin deficiency, the use of "Guardian A/D/E Plex" will be of benefit in the treatment and relief of arthritis and rheumatism, and their symptoms, and that the use of "Guardian A/D/E Plex" will be of benefit in the treatment and relief of other aches and pains.

PAR. 10. In truth and in fact "Guardian A/D/E Plex" will not be of benefit in the treatment or relief of arthritis, rheumatism, or their symptoms, or any other aches or pains, and further, neither arthritis nor rheumatism is caused by vitamin deficiency.

Therefore the advertisements set forth and referred to in Paragraph 8 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. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondents' "Cal Plex F Vitamins" are the following:

You do not know whether or not you have developed nutritional disorders; but your hair, your skin and your nails can tell you if you will stand in front of a mirror and take a good look. Look for such things as brittle, dull fingernails, falling lifeless hair split ends; dry skin, leathery or coarse textured, excessive

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skin infections, lack of normal vigor or life. These things can be built up over a long period of time. Your body is made up of the things you eat and through the years you may not have been eating the foods that make good healthy glowing skin, good fingernails, and good bone and cell structure. The CAL PLEX F vitamin formula has important ingredients that are needed to overcome the specified deficiencies. This formula has been carefully worked out in one of the leading nutritional laboratories. (Radio)

PAR. 12. 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:

(a) that "Cal Plex F Vitamins" will be of benefit in the treatment and relief of brittle and dull fingernails, falling hair, hair split at the ends, dry, leathery, and coarse textured skin, excessive skin infections and a lack of normal vigor and life;

(b) that a person, by looking in a mirror, can determine for himself whether he has a nutritional disorder and the symptoms thereof, and whether he has a need for "Cal Plex F Vitamins".

PAR. 13. In truth and in fact:

(a) "Cal Plex F Vitamins" will not be of benefit in the treatment or relief of brittle or dull fingernails, falling hair, hair split at the ends, dry, leathery, or coarse textured skin, any skin infections, nor will said preparation be of benefit in the treatment or relief of a lack of vigor or life, except in a small minority of persons whose lack of vigor or life is due to an established or existing deficiency of Vitamin B₁, Vitamin B₂ or Niacinamide;

(b) A person, by looking in a mirror, cannot determine whether he has a nutritional disorder or whether he has a need for "Cal Plex F Vitamins", nor can he, by any means, determine for himself whether he has any symptoms of a deficiency of one or more of the nutrients provided in "Cal Plex F Vitamins".

Therefore the advertisements set forth and referred to in Paragraph 11 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.

Furthermore, the statements and representations have the capacity to suggest and do suggest, directly and by implication, to persons of both sexes and all ages who experience a lack of vigor or life that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the "Cal Plex F Vitamins". In the light of such statements and representations, said advertisements are misleading in material respects and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material

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facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience a lack of vigor or life, such symptoms are not caused by an established or existing deficiency of one or more of the nutrients provided by "Cal Plex F Vitamins", and that in such persons the said preparations will be of no benefit.

PAR. 14. The dissemination by the respondents of false advertisements, as aforesaid, constituted, and now constitutes, unfair 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 Vitamin Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1511 Davenport Street, in the city of Omaha, State of Nebraska.

Respondent Joseph L. Zweiback 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 respondents Vitamin Industries, Inc., a corporation, and its officers, and Joseph L. Zweiback, individually and as

an officer 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 "Guardian 12 Plus Vitamins", "Guardian A/D/E Plex", and "Cal Plex F Vitamins", or any other preparations of 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 the dissemination of 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 represents directly or by implication:

(a) That the preparation "Guardian 12 Plus Vitamins" will be of benefit in affording protection against colds, virus infections, or any type of influenza.

(b) That "Guardian 12 Plus Vitamins" will be of value in the treatment or relief of a lack of pep, vigor or energy, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to an established or existing deficiency of Vitamin B₁, Vitamin B₂, Vitamin C or Nicotinamide and further, unless the advertisement clearly and conspicuously reveals the facts that in a great majority of persons, or of any age, sex, or other class or group thereof who experience such symptoms, these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(c) That "Guardian A/D/E Plex" will be of benefit in the treatment or relief of either arthritis or rheumatism, or the symptoms thereof, or any other aches or pains.

(d) That a person, by looking in a mirror, can determine whether he has a need for "Cal Plex F Vitamins", or that a person by any means, can determine for himself whether he has symptoms of a deficiency of one or more of the nutrients provided by "Cal Plex F Vitamins".

(e) That "Cal Plex F Vitamins" will be of benefit in the treatment or relief of brittle or dull fingernails, falling hair, hair split at the ends, dry, leathery or coarse textured skin, or skin infection.

(f) That "Cal Plex F Vitamins" will be of benefit in the treatment or relief of a lack of normal vigor or life, unless such advertisement expressly limits the effective-

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ness of the product to those persons whose symptoms are due to an established or existing deficiency of Vitamin B₁, Vitamin B₂, or Niacinamide, and further unless such advertisement clearly and conspicuously reveals the facts that in the great majority of persons, or of any age, sex or other class or group thereof, who experience such symptoms, these symptoms are caused by conditions other than those which may respond to treatment by the use of the product, and that in such persons the product will not be of benefit.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in or which fails to comply with any of the affirmative requirements of 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.
