
IN THE MATTER OF
BEECHAM PRODUCTS INC.

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

Docket C-720. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring a distributor of drug preparations, with headquarters in Clifton, N.J., to cease representing falsely in radio and magazine adver-

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Complaint

tising and otherwise that the vitamins in its "Scott's Emulsion" and "Scott's Emulsion capsules" were more beneficial than those from synthetic sources, that its said products were more digestible and functioned more quickly than any other cod liver oil preparation, and that their use was of benefit in the prevention and treatment of colds, infections and sickness.

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 Beecham Products Inc., a corporation, hereinafter referred to as respondent, has 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 Beecham Products Inc., is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business located at 65 Industrial South in the city of Clifton, State of New Jersey.

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

The designations used by respondent for the said preparations, the formulae thereof and directions for use are as follows:

1. Designation: "Scott's Emulsion" (Liquid)

Formula :	Percent
Cod Liver Oil.....	49.603
Sodium Hypophosphite.....	.199
Citric Acid Monohydrate.....	.099
Sodium Hydroxide Solution.....	.301
Oleic Acid.....	.422
Propyl Gallate.....	.010
Methocel HG 1500.....	.641
Sodium Dihydrogen Phosphate Monohydrate.....	.077
Saccharin	.010
Flavoring	.245
Demineralized H ₂ O.....	48.393
	100.000

Directions: Children and Adults—3 or 4 teaspoonfuls per day, preferably at mealtimes

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2. Designation: "Scott's Emulsion Capsules"

Formula :	Percent
Calcium Hypophosphite.....	5. 11
Diabasic Calcium Phosphate.....	11. 11
Polysorbate 80 (Tween 80).....	38. 21
Sorbitan Mono Stearate (Span 60).....	19. 10
Corn Oil.....	14. 83
Cod Liver Oil Concentrate.....	11. 64
	100. 00

Directions: 2 capsules per day, after meals

PAR. 3. Respondent causes the said preparations, when sold, to be transported from its place of business in the State of New Jersey and from warehouses in the States of Illinois, Georgia, Texas and California, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations is 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 its said business, respondent has 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 magazines and other advertising media, and by means of radio broadcasts transmitted by 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 preparations; and has disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements, disseminated as hereinabove set forth, are the following:

Nature has a way of doing things that are impossible for science to achieve. While there are many synthetic (or chemical) vitamins, science has yet to match all the benefits of natural vitamins A and D. That's why so many mothers always insist on Scott's Emulsion—the natural vitamin tonic. (Radio)

* * * * *

Scott's Emulsion has all of the benefits of pure, natural cod liver oil—it's even better because it's emulsified! Because it's emulsified it's better than any cod liver oil you've ever seen or tasted. Scott's Emulsion is creamy white and smooth—it's easier to digest—it's easier to be absorbed—it goes to work quicker in your body. Scott's Emulsion is one of the richest sources of natural vitamins A and D. (Magazine)

* * * * *

When your child's cold drags on * * * and on * * * it may be a sign that his resistance is down. You need to build up his cold-fighting strength. That's why many mothers use Scott's Emulsion the *natural* vitamin tonic. (Radio)

* * * * *

Because Scott's Emulsion is a rich source of *natural* vitamins A and D, it helps your child shorten the cold he has—and it also helps build top strength for fighting off *new* colds. (Radio)

* * * * *

This could be another winter when there are more colds than usual. During the cold-catching season it's hard to get enough of the "sunshine" vitamin D and vitamin A to help build your resistance to infections like colds. That's why so many people take Scott's Emulsion—it's the natural vitamin tonic that helps to build your body's cold-fighting strength. (Magazine)

* * * * *

If someone in your family seems to get more than their share of colds—or if colds seem to hang on and on—or if you want to build up resistance so sickness won't keep your family away from work or school so often, start taking Scott's Emulsion now. Give your family a head start on health this winter with Scott's Emulsion.

Now in two forms: Better tasting liquid or New tasteless capsules. (Magazine)

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PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication:

1. That vitamin A and vitamin D from natural sources, as contained in both Scott's Emulsion and Scott's Emulsion Capsules, are more beneficial than vitamin A and vitamin D from synthetic sources;

2. That Scott's Emulsion and Scott's Emulsion Capsules are easier to digest and easier to absorb than any other cod liver oil preparation;

3. That Scott's Emulsion and Scott's Emulsion Capsules function effectively in the body more quickly than any other cod liver oil preparation;

4. That the use of Scott's Emulsion and Scott's Emulsion Capsules is of benefit in the prevention, relief and treatment of colds and infections;

5. That the use of Scott's Emulsion and Scott's Emulsion Capsules is of benefit in the prevention of sickness.

PAR. 7. In truth and in fact:

1. Vitamin A or vitamin D from natural sources, as supplied in either Scott's Emulsion or Scott's Emulsion Capsules, is of no greater benefit than the vitamin A or vitamin D from synthetic sources;

2. Scott's Emulsion Capsules are not easier to digest, easier to absorb and will not function effectively in the body more quickly than any other cod liver oil preparation;

3. Scott's Emulsion is not easier to digest, easier to absorb and will not function effectively in the body more quickly than any other cod liver oil preparation, except when Scott's Emulsion is compared to non-emulsified cod liver oil;

4. Neither Scott's Emulsion nor Scott's Emulsion Capsules will be of benefit in the prevention, relief or treatment of colds or infections;

5. Neither Scott's Emulsion nor Scott's Emulsion Capsules are of value in the prevention of sickness, unless such sickness is due to a deficiency of vitamin A or of vitamin D.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons reading or hearing such advertisements that in cases of persons of both sexes and all ages who experience sickness there is a reasonable probability that their resistance to sickness will be increased by use of these preparations. In the light of such statements and representations, said advertisements are misleading in a material respect 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 cases of persons of both sexes and all ages who experience sickness in the United States, such sickness is rarely caused by a deficiency of vitamin A or vitamin D as provided by Scott's Emulsion or Scott's Emulsion Capsules, and that in such persons the preparations will seldom be of benefit in increasing resistance to sickness.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with

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violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 respondent 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 Beecham Products Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 65 Industrial South, in the city of Clifton, State of New Jersey.

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

ORDER

It is ordered, That respondent Beecham Products Inc., a corporation and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Scott's Emulsion" or the preparation designated "Scott's Emulsion Capsules", or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That either vitamin A or vitamin D from natural sources, as supplied in said preparation, is more beneficial than the vitamin A or vitamin D from synthetic sources;

(b) That Scott's Emulsion Capsules will be easier to digest, easier to absorb or will function effectively in the body more quickly than any other cod liver oil preparation;

(c) That Scott's Emulsion will be easier to digest, easier

to absorb or will function effectively in the body more quickly than any other cod liver oil preparation, unless such advertisement be expressly limited to a comparison with non-emulsified cod liver oil;

(d) That the use of said preparation will be of benefit in the prevention, relief or treatment of colds or infections;

(e) That the use of said preparation will be of benefit in the prevention of sickness, unless such advertisement expressly limits the effectiveness of the preparation to the prevention of sickness due to a deficiency of vitamin A or of vitamin D provided by the preparation, and further, unless the advertisement clearly and conspicuously reveals the facts that in cases of persons of both sexes and all ages who experience sickness in the United States, such sickness is rarely caused by a deficiency of vitamin A or vitamin D as provided by the preparation, and that in such persons the preparation will seldom be of benefit in increasing resistance to sickness.

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 the affirmative requirements of, Paragraph 1 hereof.

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.