

IN THE MATTER OF
PLOUGH, INC., ET AL.

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

Docket 8563. Complaint, Mar. 19, 1963—Decision, Apr. 30, 1964

Order dismissing, in view of the Feb. 20, 1964, dismissal of a similar complaint in *Sterling Drug, Inc.*, Docket 8554, 64 F.T.C. 898, complaint charging the distributor of "St. Joseph Aspirin" and its advertising agency with representing falsely that "America's leading medical journal" reported that St. Joseph Aspirin was the best buy in pain relief.

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 Plough, Inc., a corporation, and Lake-Spiro-Shurman, Inc., a 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 Plough, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3022 Jackson Avenue in the city of Memphis, State of Tennessee.

Respondent Lake-Spiro-Shurman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at Radio Center Building, Main and Union Streets, in the City of Memphis, State of Tennessee.

PAR. 2. Respondent Plough, Inc., is now, and for some time last past has been, engaged in the sale and distribution of a preparation which

comes within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent Plough, Inc., for said preparation, the formula thereof and directions for use are as follows:

Designation: "St. Joseph Aspirin."

Formula: Each tablet contains five (5) grains of aspirin.

Directions: (Take) one (1) or two (2) tablets with water. May be repeated every four (4) hours. If pains persist, or are unusually severe, see physician.

PAR. 3. Respondent Plough, Inc., causes the said preparation when sold, to be transported from its place of business in the State of Tennessee 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 preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

Respondent Lake-Spiro-Shurman, Inc., is now, and for some time last past has been, the advertising agency of Plough, Inc., and now prepares and places, and for some time last past has prepared and placed, for publication, advertising material, including the advertising herein-after referred to, to promote the sale of the said preparation. In the conduct of its business, at all times mentioned herein, respondent Lake-Spiro-Shurman, Inc., has been in substantial competition, in commerce, with other corporations, firms and individuals in the advertising business.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the preparation referred to in Paragraph Two, above, 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 magazines, and other advertising media and by means of television and radio continuities broadcast through stations located in various States of the United States and in the District of Columbia, and by means of other radio and television continuities broadcast over stations 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 St. Joseph Aspirin; and have disseminated, and caused the dissemination of, advertisements concerning said St. Joseph Aspirin 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all-inclusive thereof, of the statements and representations contained in said advertisements and television and radio broadcasts disseminated as hereinabove set forth are the following:

AMERICA'S LEADING MEDICAL JOURNAL REPORTS ST. JOSEPH
ASPIRIN YOUR "BEST BUY" IN PAIN RELIEF!

Clinical Study Explodes Claims of So-called Extra Strength or Combination Drugs, the Principal Buffered Product and the High-priced Aspirin. It Proved There Is No Difference of Note in the Speed, Strength or Percentage of Relief of *Any* of These Products When Compared With St. Joseph Aspirin. It Also Showed the So-called Extra Strength Products Which Contain Phenacetin, Caused a *Significant Amount* of Stomach Distress—but St. Joseph Aspirin Was as Gentle to the Stomach as a Plain Sugar Pill.

* * * * *

"STOMACH UPSET" CLAIMS EXPLODED!

"Doesn't upset the stomach", "No stomach irritation", "Gentler than aspirin"—have you been puzzled by such scare claims? The fact is, St. Joseph Aspirin was shown to be as gentle to the stomach as a plain sugar pill. Actually, the *only* products which caused any noticeable stomach irritation in this test were the so-called "extra strength" or combination drugs containing phenacetin. * * *

(A reproduction of a newspaper advertisement containing the foregoing representations is attached hereto marked Exhibit 1 and incorporated herein.)*

Here's important news about pain relievers—just released by one of America's most highly respected medical journals. It reports on a clinical test of five leading pain relievers—the leading so-called extra strength combination drugs; a very highly advertised aspirin; the principal buffered product—and St. Joseph Aspirin. Now here's what this test showed. It proved that there is no difference of note in the speed, quality or percentage of relief of any of these products—when compared with St. Joseph Aspirin. It also showed the so-called extra strength products caused a significant amount of stomach distress—whereas pure St. Joseph Aspirin was as free of irritating effects as a plain sugar pill. So why pay more—especially for products that contain an added drug, phenacetin, that your doctor may not want you to take. This drug, barred in one country except on prescription, is found in most so-called extra strength combination drugs. So why risk more or pay more? Ask for pure St. Joseph Aspirin—clinically shown to be the best buy in pain relief. Get it today.

. . . Radio Station WBRC,
Birmingham, Alabama.

(A reproduction of the report referred to in the above-quoted advertisements is attached hereto marked Exhibit 2 and incorporated herein.)*

*Pictorial exhibit 1 is omitted in printing.

*Pictorial exhibit 2 is omitted in printing.

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:

(1) That a report of a clinical study of pain relievers published in America's leading medical journal reflected the views of the medical association under whose auspices the said journal was published.

(2) That America's leading medical journal reported that St. Joseph Aspirin is the "best buy" in pain relief.

(3) That the clinical investigators who conducted the study and published the report in question found and reported that St. Joseph Aspirin causes no noticeable stomach irritation and that the said preparation is as gentle to the stomach as a plain sugar pill.

PAR. 7. In truth and in fact:

(1) The report of a clinical study referred to by respondents was published in The Journal of The American Medical Association, Vol. 182, No. 13, December 29, 1962. This said report was not a report of the American Medical Association. The opinions expressed in the said report were solely those of the clinical investigators who conducted the study reported on, and such opinions did not represent those of the American Medical Association (The American Medical Association's policy with regard to publication of articles in its Journal is set out in the Journal under the caption "Responsibility for Statements", as shown in a reproduction of page 156 of The Journal of The American Medical Association, Vol. 182, No. 13, December 29, 1962, attached hereto marked Exhibit 3 and incorporated herein.)*

(2) The Journal of The American Medical Association did not state, and the clinical investigators who conducted the study published in said Journal did not report therein, that St. Joseph Aspirin is the "best buy" in pain relief.

(3) The clinical investigators did not state as a finding in their report that St. Joseph Aspirin causes no noticeable stomach irritation, or that the said preparation is as gentle to the stomach as a sugar pill.

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 respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

*Pictorial exhibit 3 is omitted in printing.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

On April 15, 1964, the examiner certified to the Commission a motion by respondents to dismiss the complaint on the ground that further proceedings upon it would not be in the public interest. The examiner recommends that the motion be granted, and complaint counsel have stated that they do not object to the motion. Respondents have accompanied their motion with affidavits by responsible officers that respondents have ceased using the particular advertisement upon which the complaint was based and do not intend to resume. It does not appear however that respondents either have abandoned or intend to abandon dissemination of another advertisement which contains almost all of the representations that were alleged in the complaint to be deceptive. Nevertheless the Commission has concluded that the deceptive practices alleged herein are substantially similar to those alleged in the complaint of *Sterling Drug, Inc.*, Docket No. 8554, and that in view of the Commission order of February 20, 1964 [64 F.T.C. 898 herein], dismissing the complaint in *Sterling Drug, Inc.*, further proceedings herein would not be in the public interest. The Commission takes note of the fact that, in its order of June 25, 1962, it placed upon the suspense calendar proceedings against respondent Plough, Inc., and other major disseminators of analgesic products pending further investigation. The Commission will take such actions in these matters as appear to be required by the public interest in the light of the information which is now available and which will become available. Accordingly,

It is ordered, That respondents' motion to dismiss the complaint be, and it hereby is, granted and that the complaint be, and it hereby is, dismissed.

Commissioner MacIntyre concurring only in the result.