

IN THE MATTER OF

NATIONAL RESEARCH CORPORATION ET AL.

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

Docket 8601. Complaint, Oct. 28, 1963—Decision, Oct. 23, 1964

Order requiring Lafayette, La., distributors of "Enurol," a drug product, to cease representing falsely in advertising in newspapers, by radio and television broadcasts and otherwise, that their product is a new discovery that will prevent and cure arthritis, bursitis, rheumatism and other degenerative diseases, restore crippled parts of the body, and decrease the amount of cholesterol in the body; and to cease using the word "Research" as part of their business name.

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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 National Research Corporation, a corporation, and Saul Sonnier, John C. Jackson, and Harold Sonnier, individually, and as officers of the 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 National Research Corporation is a corporation, organized and existing under the laws of the State of Louisiana, with its office and principal place of business located on Georgette Street, at Landry Road, in the city of Lafayette, State of Louisiana.

Respondents Saul Sonnier, John C. Jackson and Harold Sonnier are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts, and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent Saul Sonnier is 215 South St. Louis Street, Lafayette, Louisiana; the address of respondent John C. Jackson is 201 Delphine Street, Lafayette, Louisiana, and the address of respondent Harold Sonnier is Scott, Louisiana.

PAR. 2. Respondents are now, and have been for some time 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 the respondents for the said preparations, the formulae thereof and directions for use are as follows:

1. Designation: "Enurol" (liquid)

Formula (1,000 c.c.):

1 Gram-----	Methyl Parahydroxybenzoate, Purified (Methyl Paraben U.S.P.) Marketed under the trade name "Tegosept M."
11 Minim-----	U.S.P. peppermint oil flavoring.
11 Minim-----	Glycerol (U.S.P.).
2.03 Grams-----	Pharmaceutical grade fungal alpha amylase derived from a strain of <i>aspergillus oryzae</i> . Marketed under the trade name "Mylace 100" by Wallerstein Company.
1.55 Fluid Oz-----	Concentrated derivative of rice bran.
3 Minim-----	Coloring as chocolate brown U.S.P.Q.S. with water.
± 120 Mg-----	Tartaric acid (U.S.P.) to lower PH of total solution to 5.0.

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2. Designation: "Enurol" (capsulettes)

Formula (4 capsulettes):

Vitamin A.....	4000 U.S.P. Units.
Vitamin D.....	400 U.S.P. Units.
Vitamin C.....	30 mg.
Vitamin B-1.....	1 mg.
Vitamin B-2.....	1.2 mg.
Niacin.....	10 mg.
Vitamin B-12.....	4 mcgm.
Calcium.....	750 mg.
Phosphorus.....	180 mg.
Magnesium.....	108 mg.
Potassium.....	76 mg.
Iron.....	20 mg.
Manganese.....	3 mg.
Zinc.....	2 mg.
Copper.....	1 mg.
Iodine.....	2 mg.

Directions: The directions for use of "Enurol" (liquid and capsulette) found on the bottle label of "Enurol" liquid are: MORNING: One full teaspoon and two ENUROL capsulettes. EVENING: Two full teaspoons and two ENUROL capsulettes. TAKE DURING OR IMMEDIATELY AFTER MEALS. FOLLOW DIRECTIONS EXACTLY FOR BEST RESULTS. SHAKE WELL BEFORE USING.

PAR. 3. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations, referred to therein collectively as "Enurol," 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 by means of television and radio broadcasts transmitted by television and radio stations located in the State of Louisiana, 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.

PAR. 4. Among and typical of the statements and representations contained in the said advertisements disseminated as hereinabove set forth are the following:

Why suffer needlessly from the aches, pains, discomforts of arthritis, bursitis and rheumatism? ENUROL relieves pain by eliminating the cause of pain! (Newspaper)

* * * * *

ENUROL relieves pains of arthritis, bursitis, rheumatism and other degenerative diseases by actually restoring the normal chemical balance in the body thus

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eliminating the cause of pain! This is the only way to relieve pain effectively * * * and ENUROL has proven itself effective in hundreds of successful tests. (Newspaper)

* * * * *

The enzyme formula in ENUROL uses up the body fluid, cholesterol, by forming a chemical agent which effectively rids the body of all diseased tissue, stopping the crippling action. This diseased tissue is deposited into the bloodstream and eliminated through normal body functions.

Then, as ENUROL's potent vitamin, mineral and iron complex strengthens and nourishes the body, the cholesterol is again utilized: building healthy, new tissue to replace that which has been eliminated.

Healthy tissue is continuously supplied until the body's stress-resistance balance is restored, and then the enzyme formula in ENUROL helps maintain this normal balance for continued good health. (Newspaper)

* * * * *

Scientists report that symptoms of premature aging, disease, energy-robbing aches, pains that may be due to arthritis and rheumatism are caused by a continual loss of enzymes by the body. Now, after 8 years of research, comes the first significant discovery in the fight against these agonizing symptoms * * * it's called ENUROL * * * a new, amazingly effective enzyme formula medicine that, based on the recommended 90-day treatment, helps rid your body of aches, pains, discomforts. (Television)

* * * * *

Is arthritis making your life miserable? We of National Research Corporation believe we have found a way to end your needless suffering. It's an amazing new enzyme formula medicine called Enurol and it may very well be the greatest discovery of our time. Developed after ten years of research, hundreds of successful tests, Enurol relieves pain of arthritis, bursitis and rheumatism. But Enurol is not a pain killer, it contains no sedatives. Enurol relieves pain by eliminating the cause of pain. (Radio)

* * * * *

We further believe that in our research and tests we have found the way to free the human body from the agonies of arthritis, bursitis, rheumatism and other symptoms of degenerative diseases * * * and that ENUROL, taken as directed, can help you return to the normal, healthy, active life without pain you once knew. (Newspaper)

* * * * *

PAR. 5. 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 Enurol will prevent and cure arthritis, bursitis, rheumatism, and other degenerative diseases, and the aches, pains and discomforts caused thereby.
2. That Enurol will restore normal structure and function to parts

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of the body crippled by arthritis, bursitis, rheumatism and other degenerative diseases.

3. That Enurol will decrease the amount of cholesterol in the body.
4. That Enurol will help rid the body of diseased and damaged tissue and aid the body in building healthy new tissue.
5. That Enurol will enable a person to maintain good health.
6. That Enurol is a new medical and scientific discovery and achievement.

PAR. 6. In truth and in fact:

1. Enurol will not be of any value in the prevention, treatment, relief or cure of arthritis, bursitis, rheumatism or any other degenerative disease, or the aches, pains or discomforts caused thereby.
2. Enurol will not restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism or any other degenerative disease.
3. Enurol will not decrease the amount of cholesterol in the body.
4. Enurol will neither help rid the body of diseased or damaged tissue nor will Enurol aid the body in building healthy new tissue.
5. Enurol will not enable a person to maintain good health.
6. Enurol is not a new medical or scientific discovery or achievement.

Therefore, the advertisements referred to in Paragraph Four 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. 7. Through the use of the corporate name National Research Corporation, alone and in conjunction with the statements and representations set forth and referred to in Paragraph Four above, respondents have also represented, and are now representing, directly and by implication, that said corporation is a national organization engaged in scientific research.

In truth and in fact, respondents are not engaged in a nationwide business, nor in scientific research or any other kind of research. Therefore, the advertisements set forth and referred to in Paragraph Four 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. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and de-

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ceptive acts and practices in commerce, in violation of Section 12 of the Federal Trade Commission Act.

Mr. Francis J. Charlton and Mr. Joel P. Stern for the Commission.
Debaillon & Miller of Lafayette, La., by *Mr. Roderick L. Miller* for all respondents except Mr. Saul Sonnier.

Voorhies, Labbe, Fontenot, Leonard & McGlasson of Lafayette, La., by *Mr. Bennett J. Voorhies* for respondent Mr. Saul Sonnier.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

JULY 13, 1964

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the dissemination of allegedly false advertisements in connection with a medicinal product. Hearings have been held at which testimony and other evidence, both in support of and in opposition to the complaint, were received. Proposed findings and conclusions have been submitted by the parties (except respondent Saul Sonnier), and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected as not material or as not warranted by the evidence.

Respondent National Research Corporation is a Louisiana corporation, with its office and principal place of business on Georgette Street at Landry Road, Lafayette, Louisiana.

Respondents John C. Jackson and Harold Sonnier are officers of the corporate respondent and formulate its policies and direct and control its acts and practices. The address of respondent John C. Jackson is 201 Delphine Street, Lafayette, Louisiana, and the address of respondent Harold Sonnier is Scott, Louisiana.

The hearing examiner having concluded for the reasons hereinafter set forth that the complaint should be dismissed as to respondent Saul Sonnier, the term respondents as used hereinafter will not include this respondent unless the contrary is indicated.

The medicinal product here involved, which is advertised and sold by respondents under the name "Enurol," actually consists of two preparations, one being a liquid and the other in capsule (or capsulette) form. The two are intended to be taken in conjunction with each other. Each is a "drug" within the meaning of the Federal Trade Commission Act.

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The formulas and directions for use of the preparations follow:

*The Liquid**Formula (1,000 c.c.) :*

1 Gram-----	Methyl Parahydroxybenzoate, Purified (Methyl Paraben U.S.P.) Marketed under the trade name "Tegosept M".
11 Minim-----	U.S.P. peppermint oil flavoring.
11 Minim-----	Glycerol (U.S.P.).
2.03 Grams-----	Pharmaceutical grade fungal alpha amylase derived from a strain of aspergillus oryzae. Marketed under the trade name "Mylace 100" by Wallerstein Company.
1.55 Fluid Oz-----	Concentrated derivative of rice bran.
3 Minim-----	Coloring as chocolate brown U.S.P. Q.S. with water.
±120 Mg-----	Tartaric acid (U.S.P.) to lower pH of total solution to 5.0.

*The Capsulettes**Formula (4 capsulettes) :*

Vitamin A-----	4000 U.S.P. Units.
Vitamin D-----	400 U.S.P. Units.
Vitamin C-----	30 mg.
Vitamin B-1-----	1 mg.
Vitamin B-2-----	1.2 mg.
Niacin-----	10 mg.
Vitamin B-12-----	4 mcgm.
Calcium-----	750 mg.
Phosphorus-----	180 mg.
Magnesium-----	108 mg.
Potassium-----	76 mg.
Iron-----	20 mg.
Manganese-----	3 mg.
Zinc-----	2 mg.
Copper-----	1 mg.
Iodine-----	2 mg.

Directions for Use:

MORNING : One full teaspoon and two ENUROL capsulettes.

EVENING : Two full teaspoons and two ENUROL capsulettes.

TAKE DURING OR IMMEDIATELY AFTER MEALS.

FOLLOW DIRECTIONS EXACTLY FOR BEST RESULTS. SHAKE WELL BEFORE USING.

(Complaint and Answer)

In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning their product, such advertisements being disseminated by means of the United States mails and by various means in com-

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merce, as "commerce" is defined in the Federal Trade Commission Act, including insertion in newspapers and by means of television and radio broadcasts transmitted by television and radio stations located in the State of Louisiana but having sufficient power to carry such broadcasts across state lines. All of this advertising was for the purpose of inducing and was likely to induce, directly or indirectly, the purchase of respondents' product. (Complaint and Answer)

Among and typical of the statements contained in such advertisements are the following:

Why suffer needlessly from the aches, pains, discomforts of arthritis, bursitis and rheumatism? ENUROL relieves pain by eliminating the cause of pain! (Newspaper)

ENUROL relieves pains of arthritis, bursitis, rheumatism and other degenerative diseases by actually restoring the normal chemical balance in the body thus eliminating the cause of pain! This is the only way to relieve pain effectively * * * and ENUROL has proven itself effective in hundreds of successful tests. (Newspaper)

The enzyme formula in ENUROL uses up the body fluid, cholesterol, by forming a chemical agent which effectively rids the body of all diseased tissue, stopping the crippling action. This diseased tissue is deposited into the bloodstream and eliminated through normal body functions.

Then, as ENUROL's potent vitamin, mineral and iron complex strengthens and nourishes the body, the cholesterol is again utilized: building healthy, new tissue to replace that which has been eliminated.

Healthy tissue is continuously supplied until the body's stress-resistance balance is restored, and then the enzyme formula in ENUROL helps maintain this normal balance for continued good health. (Newspaper)

Scientists report that symptoms of premature aging, disease, energy-robbing aches, pains that may be due to arthritis and rheumatism are caused by a continued loss of enzymes by the body. Now, after 8 years of research, comes the first significant discovery in the fight against these agonizing symptoms * * * it's called ENUROL. * * * a new, amazingly effective enzyme formula medicine that, based on the recommended 90-day treatment helps rid your body of aches, pains, discomforts. (Television)

Is arthritis making your life miserable? We of National Research Corporation believe we have found a way to end your needless suffering. It's an amazing new enzyme formula medicine called Enurol and it may very well be the greatest discovery of our time. Developed after ten years of research, hundreds of successful tests, Enurol relieves pain of arthritis, bursitis and rheumatism. But Enurol is not a pain killer it contains no sedatives. Enurol relieves pain by eliminating the cause of pain. (Radio)

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We further believe that in our research and tests we have found the way to free the human body from the agonies of arthritis, bursitis, rheumatism and other symptoms of degenerative diseases * * * and that ENUROL, taken as directed, can help you return to the normal, healthy, active life without pain you once knew. (Newspaper)

(Complaint and Answer; CX 1A-I)

Through the use of these advertisements respondents have represented, directly or by implication:

1. That Enurol will prevent and cure arthritis, bursitis, rheumatism, and other degenerative diseases, and the aches, pains, and discomforts caused thereby.

2. That Enurol will restore normal structure and function to parts of the body crippled by arthritis, bursitis, rheumatism, and other degenerative diseases.

3. That Enurol will decrease the amount of cholesterol in the body.

4. That Enurol will help rid the body of diseased and damaged tissue and aid the body in building healthy new tissue.

5. That Enurol will enable a person to maintain good health.

6. That Enurol is a new medical and scientific discovery and achievement.

The complaint charges that all of these representations are false and misleading, that respondents' product is wholly incapable of effecting the results claimed for it, and that the product is in no sense a new medical or scientific discovery or achievement.

Four experts testified in support of the complaint, three of them being medical doctors and the fourth a biochemist. The professional qualifications of all of the witnesses are beyond question. All are members of the faculty of the School of Medicine of Tulane University, New Orleans, Louisiana, and the three physicians have had long experience in the actual practice of their profession, having for many years specialized in the diagnosis and treatment of persons suffering from arthritis, bursitis, and other rheumatic diseases. The witnesses, and particularly the three physicians, are a unit in stating that respondents' product is wholly incapable of doing any of the things claimed for it in respondents' advertisements, and that the product is not a new medicinal or scientific discovery or achievement. (Tr. 34-64; 68-131; 133-166; 167-204)

The product was conceived by respondent John C. Jackson several years ago as a result of his experience with cattle. After testing the product on a substantial number of individuals, Mr. Jackson was convinced that it had merit and he then sought the aid of the other individual respondents in placing the product on the market. With

their financial assistance, a corporation was organized (respondent National Research Corporation) and a plant constructed to manufacture the product.

No medical or scientific testimony was offered by respondents. Aside from the testimony of Mr. Jackson, the only evidence offered by them as to the therapeutic effectiveness of the product consists of the testimony of four members of the public who had used the product, and a stipulation between counsel concerning the testimony of nine other users. In substance, the testimony of the four users who appeared and testified was that they had been suffering from rheumatic aches and pains, that they had been treated by physicians without obtaining relief, and that upon taking Enurol over a period of time they did obtain relief from their pains. The stipulation between counsel was that if nine other named individuals were present to testify, their testimony in substance would be that they had "been suffering from aches and pains in various joints without relief, that after taking the product Enurol over a period of time their aches and pains disappeared and have not returned." (Tr. 246-252; 253-259; 259-262; 262-272; 281-282)

Without questioning in the least the sincerity of the user witnesses, it seems clear that their testimony is of very doubtful probative value. Arthritis and bursitis are universally recognized by physicians as being extremely difficult to diagnose and treat (rheumatism is regarded by physicians largely as a lay term, indicating any discomfort around the joints). They cannot be diagnosed correctly by a layman. Thus the users here may not in fact have had arthritis or bursitis at all.

Moreover, any relief from pain which the users may have had after taking Enurol may very well have been due not to Enurol but to what physicians refer to as a "spontaneous remission." In layman's language, this means simply that the disease for no known reason temporarily lets up, is less severe or may seem to disappear entirely. Spontaneous remissions are wholly unpredictable even when the sufferer is under the treatment of a skilled physician.

Further, the mental or psychological condition of the user of a medicinal preparation may play a significant part in the user's feeling of relief. The taking of almost any preparation or even the mere consultation of a patient with his physician may cause the individual to feel better. (Tr. 80-85; 86-88; 90-91; 94-99; 140-141; 142-146; 177-182)

All of these factors cast serious doubt upon the probative value of the user testimony. Certainly testimony of this type is not comparable

in probative weight with testimony of highly qualified and experienced physicians such as those who testified in the present case.

Respondents point out that none of the physicians has ever tested or used the specific product here involved. The witnesses are, however, unquestionably familiar with the ingredients of the product. The fact that they have not used or tested the specific preparation is not considered by the hearing examiner to detract materially from the weight of their testimony.

It is further urged by respondents in their defense that although they supplied the Commission's investigating staff with the names and addresses of numerous users of Enurol, no effort was made by the staff to contact such users and ascertain the users' experience with the product. Further, it is asserted that the Commission has had no tests made of the product. The hearing examiner is unable to see that there was any legal obligation on the Commission to do either of these things. The Commission was entitled to rely upon the opinion of qualified experts as to the therapeutic value of the product.

Upon consideration of the entire record and upon the basis of the overwhelming weight of the evidence, it is found that the product, Enurol, will not be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or the aches, pains, or discomforts caused thereby. The product will not restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative disease. It will not decrease the amount of cholesterol in the body. Enurol will neither help rid the body of diseased or damaged tissue nor aid the body in building healthy new tissue. It will not enable a person to maintain good health. The product is not a new medical or scientific discovery or achievement.

It is therefore concluded that the representations in question are erroneous and misleading, and constitute false advertisements.

This does not mean that there has been any willful or intentional misrepresentation on the part of respondents. On the contrary, the hearing examiner is convinced of their good faith. It is, however, elementary that wrongful intent is not an essential element of a violation of the Federal Trade Commission Act. Here the issue is simply whether the product in question has the therapeutic properties claimed for it in the advertisements.

The complaint also attacks the name of the corporate respondent, National Research Corporation, charging that the name represents, contrary to fact, that the corporation "is a national organization engaged in scientific research".

In the examiner's opinion this charge has not been sustained. Insofar as the word "National" is concerned, the word is in such common use in names of business enterprises that it is difficult to believe that it would be misleading to anyone. One could hardly examine a telephone directory of any city or medium-sized town in the country without finding numerous business concerns employing the word national in their names. There is not the slightest indication in the present record that use of the word has ever misled anyone or that it is likely to do so.

As for the word "Research," it is true that the corporation itself has so far done little or no research. However, prior to the formation of the corporation, respondent John C. Jackson did engage in considerable study and research in connection with the product, and the corporation was the beneficiary of such efforts. The corporation's plant is a substantial one, representing an investment of some \$60,000 and containing numerous items of equipment such as condensers, burners, refrigeration units, pressure pumps, vacuum pumps, etc. (Tr. 32). Here again there is no indication whatever in the record that use of the word has ever misled anyone or that it is likely to do so.

There is no occasion here for the mills of the Government to grind so fine as to require excision of portions of the corporate name. Corporate and trade names are valuable business assets and should never be proscribed unless the necessity for such drastic action is clearly apparent.

Finally, there remains the question as to what action is appropriate regarding respondent Saul Sonnier. In response to the complaint, Mr. Sonnier filed a motion to dismiss as to himself. Because of illness he was unable to attend the hearings; however, a stipulation as to his connection with the corporation was entered into by counsel. For some time prior to April 12, 1963, Mr. Sonnier was president and a director of the corporate respondent, was active in the operation of the business, and was partly responsible for its policies and practices. On that date (April 12, 1963, which was some six months prior to the issuance of the complaint), he resigned both as president and as director and has had nothing to do with the management of the business since that time, although he is still the owner of a substantial amount of capital stock of the corporation (Tr. 207-208; RX 2A-B).

Mr. Sonnier having severed all official connection with the business long before the complaint was issued, no useful purpose would be served by retaining him as a respondent in the proceeding. The complaint is therefore being dismissed as to him.

The dissemination by respondents of the false advertisements set forth above constitutes unfair and deceptive acts and practices in com-

merce in violation of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondents National Research Corporation, a corporation, and its officers, and John C. Jackson and Harold Sonnier, individually and as officers 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 the liquid and capsule preparations referred to collectively as "Enurol", or either of them, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, 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 said preparations will be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or of any aches, pains, or discomforts caused thereby.

(b) That said preparations will restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative diseases.

(c) That said preparations will decrease the amount of cholesterol in the body.

(d) That said preparations will help rid the body of diseased or damaged tissue or aid the body in building healthy new tissue.

(e) That said preparations will enable a person to maintain good health.

(f) That said preparations are a new medical or scientific discovery or achievement.

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 Paragraph 1 hereof.

It is further ordered, That the complaint be, and it hereby is,

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dismissed as to the charges in Paragraph Seven thereof relating to the name of the corporate respondent.

It is further ordered, That the complaint be, and it hereby is, dismissed in its entirety as to respondent Saul Sonnier.

FINAL ORDER

The complaint in this proceeding charged that respondents violated the Federal Trade Commission Act by misrepresenting that the medicinal product which they distribute and sell under the name of "Enurol" will prevent and cure arthritis, bursitis, rheumatism and other degenerative diseases and the aches and pains and discomforts caused thereby, restore normal structure and function to parts of the body crippled by arthritis, bursitis, rheumatism and other degenerative diseases, decrease the amount of cholesterol in the body and help rid the body of diseases and damaged tissues and aid the body in building healthy new tissues, as well as to enable the person to maintain good health. The complaint further charged that respondents misrepresented Enurol as a new medical and scientific discovery and achievement.

On July 13, 1964, the examiner issued his initial decision, sustaining these allegations in the complaint, with an appropriate order to cease and desist. Respondents, however, were also charged with misrepresenting, through the use of their corporate name "National Research Corporation" alone and in conjunction with the other representations which are the subject of the complaint, that the respondent corporation is a national organization engaged in scientific research when in truth and in fact respondents are not engaged in a nation-wide business or in scientific or any other kind of research. This charge was dismissed by the hearing examiner.

Neither side appealed from the initial decision. The Commission, by its order of September 2, 1964, placed this proceeding on its own docket for review for further consideration of the charges contained in Paragraph Seven of the complaint, relating to the allegedly deceptive nature of the corporate respondent's name, namely, National Research Corporation. The order further provided that both parties could, if they so desired, file briefs on this issue within thirty days after receipt of this order. Complaint counsel, on September 29, 1964, filed a brief on this issue, pursuant to the authorization in the Commission's order. Respondents, however, have not taken advantage of the opportunity afforded them to file a brief on this question.

The Commission, on the basis of its review of the record, the initial

decision, and the brief of counsel in support of the complaint, has determined that the use of the word "Research" in the name of the corporate respondent has the capacity and tendency to mislead and deceive the public. Accordingly,

It is ordered, That the portion of the initial decision on page 9 [p. 1078 herein], beginning with the phrase "The complaint also attacks" and ending with the phrase on page 10 [p. 1079 herein] "unless the necessity for such drastic action is clearly apparent" be deleted and that the following findings and conclusions be substituted therefor:

The corporate respondent is not engaged in research and does not have the personnel to conduct scientific or medical research. In this connection the Commission notes that the individual respondent John C. Jackson was the only individual at the National Research Corporation responsible for research, that his formal education ended at high school, that he has never taken any courses in chemistry, nutrition, biology or in any other scientific field, and that prior to developing Enurol, Mr. Jackson was in the cattle business. Finally, the record shows that National Research Corporation has never employed any chemists, pharmacists, biologists or nutritionists.

In the context of the spurious health claims made for Enurol, the use of the word "Research" in the corporate respondent's trade name under these circumstances inherently has the capacity and tendency to mislead the public into the belief that back of respondents' products there stands an organization with the personnel and other requisites for scientific and medical research. The public interest, therefore, requires that the term "Research" be deleted from the corporate respondent's trade name. On the other hand, as the examiner noted, the term "National" is of such widespread use that even in this context the utilization of this term is relatively innocuous and we do not infer that in this case the use of this word in the corporate respondent's trade name has the capacity and tendency to mislead, necessitating that respondents be directed to excise it from their trade name.

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

ORDER

It is ordered, That respondents National Research Corporation, a corporation, and its officers, and John C. Jackson and Harold Sonnier, individually and as officers 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 the liquid and capsule preparations referred to collectively as "Enurol," or either of them, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, 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 said preparations will be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or of any aches, pains, or discomforts caused thereby.

(b) That said preparations will restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative disease.

(c) That said preparations will decrease the amount of cholesterol in the body.

(d) That said preparations will help rid the body of diseased or damaged tissue or aid the body in building healthy new tissue.

(e) That said preparations will enable a person to maintain good health.

(f) That said preparations are a new medical or scientific discovery or achievement.

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 Paragraph 1 hereof.

3. Disseminating, or causing to be disseminated, directly or indirectly, by means of the United States mails or by any other means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement in which the word "research" or any other words of similar import are used as a part of any name under which respondents do business or which represents in any manner, directly or indirectly, that respondents are engaged in research of any kind.

Complaint

66 F.T.C.

It is further ordered, That the complaint be, and it hereby is, dismissed in its entirety as to respondent Saul Sonnier.

It is further ordered, That the initial decision and order to cease and desist as modified herein be, and they hereby are, adopted as the decision and order of the Commission.

It is further ordered, That respondent National Research Corporation, a corporation, and individual respondents John C. Jackson and Harold Sonnier shall, within sixty (60) days of receipt of this order, file with the Commission a report, in writing, setting forth in detail the manner in which respondents have complied with the terms of