

TIMED ENERGY, INC.

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

Docket C-855. Complaint, Nov. 5, 1964—Decision, Nov. 5, 1964

Consent order requiring New York City distributors of drug and food products to cease making false therapeutic claims for its vitamin and mineral preparations "Potencaps and Vita-Timed Capsules."

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 Timed Energy, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a pro-

1094

Complaint

ceeding 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 Timed Energy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 419 Park Avenue, South, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of preparations which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

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

I. Designation:

Potencaps.

Formula:

Each Capsule Contains:

Vitamin A Palmitate.....	10,000 USP units.
Calciferol (Vitamin D).....	1,000 USP units.
Thiamine Chloride (Vitamin B ₁).....	15 mgm.
Riboflavin (Vitamin B ₂).....	6 mgm.
Pyridoxine HCl (Vitamin B ₆).....	0.5 mgm.
Niacinamide.....	20 mgm.
Glutamic Acid.....	5 mgm.
Cobalimin Conc. (Vitamin B ₁₂).....	3 mcg.
Lemon Bioflavinoid Complex.....	5 mgm.
dl-Methionine.....	5 mgm.
Iodine as derived from Potassium Iodide...	0.1 mgm.
Magnesium Sulfate Dried.....	7.2 mgm.
Rutin.....	5 mgm.
Copper Sulfate.....	2.0 mgm.
Manganese Sulfate.....	3.4 mgm.
Biotin.....	0.5 mcg.
Potassium Chloride.....	1.3 mgm.
Iron as derived from Ferrous Sulfate Exsiccated.	10.0 mgm.
Zinc Sulfate Dried.....	1.0 mgm.
L-Lysine Monohydrochloride.....	10.0 mgm.
Ascorbic Acid (Vitamin C).....	30 mgm.
d-Alpha Tocopherol Acid Succinate (Vitamin E).	2 I.U.
Calcium Pantothenate.....	5 mgm.
Inositol.....	5 mgm.

Directions:

Average dose as a dietary supplement one capsule daily.

Complaint

66 F.T.C.

II. *Designation:*

Vita-Timed Capsules

Formula:

Each capsule contains:

Vitamin A Palmitate.....	5,000 USP units.
Calciferol (Vitamin D).....	500 USP units.
Thiamine Chloride (Vitamin B ₁).....	7.5 mgm.
Riboflavin (Vitamin B ₂).....	2.5 mgm.
Ascorbic Acid (Vitamin C).....	30.0 mgm.
Cobalamin Conc. (Vitamin B ₁₂).....	1 mcgm.
Pyridoxine HCl (Vitamin B ₆).....	0.1 mgm.
Calcium Pantothenate.....	3 mgm.
Glutamic Acid.....	5 mgm.
Niacinamide.....	10.0 mgm.
Lemon Bioflavonoid Complex.....	5 mgm.
dl-Methionine.....	5.0 mgm.
Iodine as derived from Potassium Iodide..	0.1 mgm.
Magnesium Sulfate Dried.....	7.2 mgm.
Copper Sulfate.....	2.0 mgm.
Manganese Sulfate.....	3.4 mgm.
Inositol.....	5.0 mgm.
Potassium Chloride.....	1.3 mgm.
Iron as derived from Ferrous Sulfate Exsiccated.	10.0 mgm.
Biotin.....	0.5 mcgm.
Zinc Sulfate Dried.....	1.0 mgm.
Rutin.....	5 mgm.
L-Lysine Monohydrochloride.....	10 mgm.
d-Alpha Tocopherol Acid Succinate (Vitamin E).	1.2 I.U.

Directions:

Average dose as a dietary supplement one capsule daily.

PAR. 3. Respondent causes the said preparations, when sold, to be transported from its place of business in the State of New York 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 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 its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of circular letters and pamphlets, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said preparations; and has disseminated, and caused

1094

Complaint

the dissemination of, advertisements concerning the 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 the 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, with respect to respondent's preparation designated "Potencaps" are the following:

You'd be willing to risk a 10¢ piece, wouldn't you, if you thought it would blaze a trail for you to a fuller life, free of the "dragged out" feeling that may plague us, regardless of our age, because of a vitamin and mineral deficiency? * * *

* * * 31 capsules each containing your minimum daily requirement of important vitamins, minerals and food supplements. You just take ONE capsule a day for the next 31 days and see if you don't find it around-the-clock source of new energy. * * *

AN EXCLUSIVE NEW FEATURE SETS "POTENCAPS" APART!

The little multi-colored granules in each "Potencaps" capsule are compounded according to an exclusive formula. They have graduated melting points. The various colors are released at successive intervals of about two hours. You get a *constantly replenished* supply of the vitamins and minerals your body needs, in a steady 8-hour flow.

This principle has long been applied to certain *pharmaceutical* preparations but it has *never been applied to any vitamin product before*. You will be surprised how this wonderful product can help you get through the day with a minimum of fatigue caused by a vitamin and mineral deficiency. No longer are you likely to "fade" as the day drags on. No longer are you likely to become more irritable with each passing hour until, by supertime you are thoroughly fagged out and ready to call it a day.

* * * * *

LIFE BEGINS AT SUPPERTIME!

Whether you are a man or woman—regardless of your position in life—supertime leaves much to be done.

Mothers have a hundred and one things left undone—children's problems, more housework and *most important* a husband to keep happy and comfortable.

Hubby has his problems and worries too. Life is moving along fast—too fast it seems.

Everyone it appears, married or single, with so much still to be done really needs a fresh start just when they are hoping and praying that they can "call it a day."

That's probably when you'll appreciate "Potencaps" the most.

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

Complaint

66 F.T.C.

1. That Potencaps is the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.
2. That Potencaps will provide sufficient energy to a person to enable him to complete his daily tasks.
3. That men and women have a special need at suppertime for vitamins and minerals as supplied by Potencaps.
4. That during the day a person's body needs a constantly replenished supply of the vitamins and minerals contained in Potencaps.
5. That Potencaps, because of its prolonged release feature, provides greater nutritional benefits to the user than other products of similar content which do not have this feature.
6. That Potencaps rapidly supplies new energy to the human body and continues to provide new energy for 24 hours.
7. That the use of Potencaps will be of benefit in the treatment and relief of tiredness, exhaustion and irritability.

PAR. 7. In truth and in fact:

1. Potencaps is not the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.
2. Potencaps will not provide sufficient energy to a person to enable him to complete his daily tasks.
3. Men and women do not have a special need at suppertime or at other particular times during the day for vitamins or minerals as supplied by Potencaps.
4. During the day a person's body does not need a constantly replenished supply of the vitamins and minerals contained in Potencaps.
5. Potencaps does not provide greater nutritional benefits to the user than other products of similar content which do not provide prolonged release action.
6. Potencaps does not rapidly supply new energy to the human body, nor does it continue to provide new energy for 24 hours.
7. The use of Potencaps will not be of benefit in the treatment or relief of tiredness, exhaustion or irritability except in a small minority of persons in whom such symptoms are due to a deficiency of Thiamine Chloride (Vitamin B₁), Riboflavin (Vitamin B₂), Ascorbic Acid (Vitamin C), or Niacinamide.

Furthermore, the statements and representations have the capacity and tendency to suggest, and do suggest, to persons of both sexes and all ages who experience feelings of tiredness, exhaustion or irritability, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of Potencaps. In the light of such statements and representations, the advertisements are misleading in a material respect and therefore constitute false advertisements, as

1094

Complaint

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 the symptoms of tiredness, exhaustion, or irritability, such symptoms are not caused by a deficiency of one or more of the nutrients provided by Potencaps, and that in such persons the said preparation will be of no benefit.

Therefore the advertisements set forth and 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. Among and typical of the statements and representations contained in said advertisements, disseminated as hereinabove set forth, with respect to respondent's preparation designated "Vita-Timed Capsules" are the following:

Do you have all the pep, vim and vigor you should have?

Here's a way to find out. If you are willing to risk 10¢. Yes, if you are slowing up and don't have the same zip and zest for living it may be due to vitamin deficiency. Scientists have long studied our nutritional requirements and well know the importance of balanced nutrition to our every day living. Vita-Timed Capsules have been formulated by one of the outstanding laboratories of the country to insure against vitamin and mineral deficiency. They not only contain all the vitamins and minerals necessary to supplement your present diet, but they have a *unique feature—Controlled Release*.

Here is how Controlled Release works. Once a day—preferably in the morning—you take only one Vita-Timed Capsule. After two hours, one fourth of the vitamin and mineral content is released to the body to be assimilated. Two hours later a second quarter of the content is available to the body. Two hours later the third quarter and so on, until the entire capsule has been assimilated in small efficient doses. Your body receives a full benefit of all the 25 vitamins and minerals in small even doses over a full 8 hours.

This method of Time Release has been used on pharmaceuticals and is now in this exclusive Vita-Timed Capsule Formula.***

You may cancel anytime you wish but I have a feeling you will want to continue this Vita-Timed Plan and enjoy the energy, the pep, vim and vigor that you may be now lacking due to a vitamin mineral-deficiency.

The enclosed label from a Vita-Timed Capsule container lists the vitamins and minerals contained in each capsule.

PAR. 9. 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 Vita-Timed Capsules is the only prolonged release vitamin or vitamin-mineral preparation available to consumers.
2. That the use of Vita-Timed Capsules will be of benefit in the treat-

Decision and Order

66 F.T.C.

ment and relief of a lack of energy, strength, vitality and vigor, and run-down feeling.

PAR. 10. In truth and in fact:

1. Vita-Timed Capsules is not the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.

2. The use of Vita-Timed Capsules will not be of benefit in the treatment or relief of a lack of energy, strength, vitality or vigor, or run-down feeling except in a small minority of persons in whom such symptoms are due to a deficiency of Thiamine Chloride (Vitamin B₁), Riboflavin (Vitamin B₂), Ascorbic Acid (Vitamin C), or Niacinamide.

Furthermore, the said statements and representations have the capacity and tendency to suggest, and do suggest, to persons of both sexes and all ages who experience a lack of energy, strength, vitality or vigor, or rundown feeling, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of Vita-Timed Capsules. In the light of said 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 the great majority of persons, or of any age, sex or other group or class thereof, who experience such symptoms, these symptoms are not caused by a deficiency of one or more of the nutrients provided by Vita-Timed Capsules, and that in such persons the said preparation will be of no benefit.

Therefore the advertisements set forth and referred to in Paragraph Eight 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. The dissemination by 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with 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, make the following jurisdictional findings, and enters the following order:

1. Respondent Timed Energy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 419 Park Avenue, South, in the 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 respondent and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That respondent Timed Energy, 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 any vitamin, or vitamin-mineral preparation do forthwith cease and desist from, directly or indirectly, 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, that vitamin, or vitamin-mineral preparations which release their contents over a prolonged period of time when being digested in the human body are in any way superior, because of this feature, to other preparations of similar content which do not have this feature.

PART II

It is further ordered, That respondent Timed Energy, 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 "Potencaps" or "Vita-Timed Capsules," or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist

from, directly or indirectly, 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:

1. That "Potencaps" or "Vita-Timed Capsules," or both of them together, constitute the only prolonged release vitamin or vitamin-mineral combination preparations available to consumers.

2. That "Potencaps" will provide sufficient energy to a person to enable him to complete his daily tasks.

3. That men or women have a special need at suppertime for vitamins or minerals as supplied by "Potencaps."

4. That during the day a person's body needs a constantly replenished supply of the vitamins or minerals contained in "Potencaps."

5. That "Potencaps" rapidly supplies new energy to the human body, or continues to provide new energy for 24 hours: or which misrepresents in any manner the time in which said preparation may produce such an effect.

6. That the preparation "Potencaps" or any ingredient supplied thereby, will be of benefit in the treatment and relief of tiredness, exhaustion, or irritability, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Thiamine Chloride (Vitamin B₁), Riboflavin (Vitamin B₂), Ascorbic Acid (Vitamin C), or Niacinamide, and, further, unless the advertisement clearly and conspicuously reveals the facts that in the great majority of persons, and of any age, sex or other class or group thereof, who experience tiredness, exhaustion or irritability, such 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.

7. That the use of "Vita-Timed Capsules," or any ingredient supplied thereby, will be of benefit in the treatment or relief of a lack of energy, strength, vitality or vigor or run-down feeling, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Thiamine Chloride (Vitamin B₁), Riboflavin (Vitamin B₂), Ascorbic Acid (Vitamin C), or Niacinamide, and, further, unless the 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 tiredness, exhaustion or irritability, lack of energy, strength, vitality and vigor or run-

down feeling, such 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.

PART III

It is further ordered, That respondent Timed Energy, 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 any vitamin or vitamin-mineral preparation do forthwith cease and desist from directly or indirectly, 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 respondent's 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, PART I or II 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.