

IN THE MATTER OF
INTERNATIONAL OIL & METALS CORPORATION trading as
LIFE NUTRITION ET AL.*

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

Docket 8637. Complaint, Aug. 11, 1964—Decision, June 24, 1966

Order requiring a New York City distributor of "Life Nutrition" vitamin capsules to cease making false and exaggerated claims concerning the efficacy of its vitamin products.

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 International Oil & Metals Corporation, a corporation, trading as Life Nutrition, and Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt, individually and as officers of said corporation, and Maxwell Sackheim-Franklin Bruck, 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 International Oil & Metals Corporation is a corporation, organized 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 19 West 61st Street, in the

* For Commission's opinion in this case, see consolidated opinion of the Commission, *In the Matter of Dollar Vitamin Plan, Inc., et al.*, Docket No. 8636, pp. 933, 969 herein.

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city of New York, State of New York. Said corporate respondent conducts its business under the name Life Nutrition.

Respondents Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt are officers of the corporate respondent International Oil & Metals Corporation and each participates in the preparation, direction and control of the acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as that of said corporate respondent.

Respondent Maxwell Sackheim-Franklin Bruck, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 545 Madison Avenue, in the City of New York, State of New York.

PAR. 2. Respondents International Oil & Metals Corporation, Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt are now, and have 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 said respondents for said preparations, the formulas thereof and directions for use are as follows:

- (1) *Designation:* Life Nutrition High-Potency Vitamin-Mineral Capsules
Formula M.

		<i>% Min. Daily Req.</i>
<i>Formula:</i>	Vitamin A	
	(Palmitate) 6,700 USP Units	167.5%
	Vitamin D	
	(Irrad. Ergost.) 500 USP Units	125%
	Vitamin B ₁	
	(Mononitt) 5 mg.	500%
	Vitamin B ₂	
	(Riboflavin) 2.5 mg.	208%
	Vitamin B ₆	
	(Pyridoxine Hydrochloride) 0.25 mg.	**
	Vitamin B ₁₂ 2 mcg.	**
	Vitamin C 55 mg.	183.3%
	Niacinamide 20 mg.	200%
	Calcium Pantothenate 3 mg.	***
	Vitamin E 2 I.U.	**
	Vitamin K (Menadione) 0.5 mg.	**
	Citrus Bioflavonoid Complex 5 mg.	***
	Biotin 2.5 mcg.	***
	Sodium Caseinate 50 mg.	***
	Choline Bitartrate 25 mg.	***

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		<i>% Min. Daily Req.</i>
<i>Formula:</i>	Inositol 15 mg.	***
	l-Lysine Monohydrochloride 5 mg.	**
	Calcium (from DiCalcium Phosphate, Anhydrous) 25 mg.	3.3%
	Phosphorus (from Dicalcium Phosphate, Anhydrous) 20 mg.	2.7%
	Copper (from Copper Sulphate, Monohydrate) 0.45 mg.	**
	Iron (from Ferrous Sulfate, Dried) 10.0 mg.	100.0%
	Magnesium (from Magnesium Sulfate, Dried) 1.0 mg.	**
	Manganese (from Manganese Sulfate) 0.3 mg.	***
	Potassium (from Potassium Sulfate) 1.5 mg.	**
	Zinc (from Zinc Sulfate) 0.1 mg.	***
	Sulfur (from the Sulfates) 3.0 mg.	***
	* Minimum daily requirement	
	** Minimum daily requirement not es- tablished	
	*** Need in human nutrition not estab- lished.	
<i>Directions:</i>	Average dosage for Adults: One Capsule Daily. Food Supplement—For Dietary Purposes Only.	
(2) <i>Designation:</i>	Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W.	

		<i>% Min. Daily Req.</i>
<i>Formula:</i>	Vitamin A (Palmitate) 6,700 USP Units	167.5%
	Vitamin D (Irrad. Ergost) 670 USP Units	167.5%
	Vitamin B ₁ (Mononitt) 4.3 mg.	430%
	Vitamin B ₂ (Riboflavin) 2.0 mg.	166%
	Vitamin B ₆ (Pyridoxine Hydrochloride) 0.5 mg.	**
	Vitamin B ₁₂ 3.0 mcg.	***
	Vitamin C 75 mg.	250%
	Niacinamide 15 mg.	150%
	Calcium Pantothenate 5 mg.	***
	Vitamin E 2 I.U.	**
	Vitamin K (Menadione) 0.4 mg.	**
	Citrus Bioflavonoid Complex 5 mg.	***
	Biotin 2.5 mcg.	***
	Sodium Caseinate 50 mg.	***
	Choline Bitartrate 20 mg.	***

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<i>Formula:</i>		<i>% Min. Daily Req.</i>
Inositol 10 mg.		***
Liver (whole Dessicated) 10 mg.		
l-Lysine Monohydrochloride 5 mg.		**
Calcium (from DiCalcium Phosphate, Anhydrous) 25 mg.		3.3%
Phosphorus (from DiCalcium Phosphate, Anhydrous) 20 mg.		2.7%
Copper (from Copper Sulfate, Monohydrate) 0.45 mg.		**
Iron (from Ferrous Sulfate, Dried) 15.0 mg.		150.0%
Magnesium (from Magnesium Sulfate, Dried) 1.5 mg.		**
Manganese (from Manganese Sulfate) 0.3 mg.		***
Potassium (from Potassium Sulfate) 1.5 mg.		**
Zinc (from Zinc Sulfate) 0.5 mg.		***
Sulphur (from the Sulfates) 12.0 mg.		***
* Minimum daily requirement		
** Minimum daily requirement not established		
*** Need in human nutrition not estab- lished.		

Directions: Average Dosage for Adults: One Capsule Daily. Food Supplement—For Dietary Purposes Only.

PAR. 3. Respondents International Oil & Metals Corporation, Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt cause the said preparations, when sold, to be transported from their 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. 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.

Respondent Maxwell Sackheim-Franklin Bruck, Inc., is now, and for some time last past has been, the advertising agency of International Oil & Metals Corporation, and now prepares and places, and for some time last past has prepared and placed, for publication advertising material, including the advertising hereinafter referred to, to promote the sale of the said preparations. In the conduct of its business, at all times mentioned herein, res-

ponent Maxwell Sackheim-Franklin Bruck, 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 said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning 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, magazines and other advertising media, and by means of circulars and brochures, 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 and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Important nutritional news . . . at last! Here's the electrifying news you've hoped for! We now offer two remarkable formulas—one for men—one for women—each of which combines the powers of at least 26 precious ingredients to help you achieve a feeling of increased pep and energy if you are otherwise healthy but suffer from a deficiency of these vitamins and minerals.

* * * * *

Two truly comprehensive safe high potency vitamin plans including Sodium Caseinate and Citrus Bioflavonoid Complex may help you to increased pep, energy and well-being.

* * * * *

Without these precious vitamins and minerals—in sufficient amounts over a long period—you cannot hope to feel your best in mind and body. You lose strength and energy—you feel tired, nervous and depressed, and you may pay dearly in lowered resistance to disease—lowered efficiency and earning power—inability to give your family the loving care and companionship that makes for a happy, successful home life.

* * * * *

Two special plans: 1. For men—2. For women—tailored to your needs.

* * * * *

Vitamin Additive For Folks Over 40 . . . Tired during the day? Worn out at night? Life Nutrition's exclusive formula brings you high-potency vitamin-mineral capsules for extra pep and energy.

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"Our fights have turned to kisses." It's hard to believe that my wife and I used to fight . . . To correct this condition we began taking Life Nutrition Capsules—just one a day! Before long we had more pep, our dispositions improved, we were back in each other's arms!

* * * * *

"I was so worried . . . my husband slept all day . . . every Sunday". What can you do when your husband acts like an old man . . . when he doesn't enjoy anything better than sleeping all day Sunday, and is always "too tired" to have fun—go visiting, to a movie, dancing? What's the answer for a man who has lost his pep and energy while still young?

Those questions used to worry me all the time. For some unknown reason, my husband had been robbed of his energy and vitality; and I just didn't know what to do. Then I saw a Life Nutrition ad in the newspaper. It told how men—and women (who are otherwise normally healthy)—may feel worn-out, nervous and irritable due to an easily corrected deficiency of vitamins in their diet.

Thousands of people had increased their pep and vigor through the help of the Life Nutrition Plan. I thought perhaps it could help my husband, too, so I sent for a trial supply. They made my husband feel like a new man—as happy and energetic as when we were first married.

If you want to help your husband, send for a 30-day trial supply of Life Nutrition High-Potency Capsules today!

* * * * *

I always felt simply "run-down." People were thinking of me as a "spoilsport." I didn't know why until my doctor put me wise. He told me that I acted like a man much older than myself, and explained why I felt "tired" . . . Well, I put off doing anything about my condition—until one day I sent for a 30-day trial supply of high-potency Life Nutrition Capsules . . . In a short time, I began to feel like a new man!

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:

1. Life Nutrition High-Potency Vitamin-Mineral Capsules are a new medical and scientific discovery and achievement;
2. Life Nutrition High-Potency Vitamin-Mineral Capsules Formula M are distinctively suited to the needs of men;
3. Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W are distinctively suited to the needs of women;
4. Persons past forty years of age have a particular need for Life Nutrition High-Potency Vitamin-Mineral Capsules;
5. Life Nutrition High-Potency Vitamin-Mineral Capsules increase and stimulate sexual vitality;
6. The use of Life Nutrition High-Potency Vitamin-Mineral Capsules and each of the ingredients therein will be of benefit in

the treatment and relief of tiredness, nervousness, depression, loss of strength and energy, loss of happiness, loss of a sense of well-being, and appearing and feeling older than one should.

PAR. 7. In truth and in fact:

1. Life Nutrition High-Potency Vitamin-Mineral Capsules are not a new medical or scientific discovery or achievement;

2. Life Nutrition High-Potency Vitamin-Mineral Capsules Formula M are not distinctively suited to the needs of men;

3. Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W are not distinctively suited to the needs of women;

4. Neither adults past forty years of age nor adults of any other age group have a special need for Life Nutrition High-Potency Vitamin-Mineral Capsules;

5. Life Nutrition High-Potency Vitamin-Mineral Capsules will not increase or stimulate sexual vitality;

6. Life Nutrition High-Potency Vitamin-Mineral Capsules will not be of benefit in the treatment or relief of tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should, except in a small minority of persons whose tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than they should is due to a deficiency of Vitamin B₁ (Thiamine Mononitrate), Vitamin B₂ (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide. All the remaining ingredients in these preparations are of no benefit in the treatment or relief of said symptoms.

Therefore the advertisements set forth and referred to in Paragraph Five 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. Through the use of the statements in the aforesaid advertisements, and others similar thereto not specifically set out herein, respondents have also represented, and are now representing, directly and by implication to persons of both sexes and all ages who experience feelings of tiredness, nervousness, depression, loss of strength and energy, loss of happiness, loss of a sense of well-being, and appearing and feeling older than one should, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the aforementioned 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 the great majority of persons, or of any age, sex or other group or class thereof, who experience the symptoms of tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should, such symptoms are not caused by a deficiency of one or more of the nutrients provided by Life Nutrition High-Potency Vitamin-Mineral Capsules, and that in such persons the said preparations will be of no benefit.

PAR. 9. 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.

Mr. Daniel J. Manelli and Mr. Joel P. Stern supporting the complaint.

Mr. Milton A. Bass and Mr. Solomon H. Friend, of Bass & Friend, New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

JUNE 15, 1965

Summary

The above entitled proceeding, D. 8637, and a companion proceeding, D. 8636 [p. 933 herein], were commenced under § 5 and § 12 of the Federal Trade Commission Act, and involve alleged deceptive advertising of vitamin products. Although the two proceedings were never formally consolidated they were informally treated as such, both prior to hearing and thereafter, both being tried together.

In the decision in the companion proceeding, D. 8636 [p. 941 herein], also filed this day, there is an extensive review of both proceedings, including procedures prior to hearing. This review may be read in connection with the present decision, and is herewith summarized:

Complaints in both proceedings issued on August 11, 1964. In a Food and Drug injunction action commenced on August 17, 1964, the respondent vitamin companies and respondent Cohen, their defendants, were placed under injunction, with others, on that date and subsequently, by a United States District Court, in respect to the misbranding of products involved in the present two

proceedings. There was also a prior in rem condemnation decree issued by the same court in respect to such products. An appeal, directed against the injunction and prior condemnation, was taken to the U.S. Court of Appeals for the Third District. Respondents in the present proceeding cited this appeal, and the injunction proceedings generally, in order to obtain continuances from the examiner.

Shortly prior to the commencement of hearings herein respondents' counsel advised by letter that they would offer no medical experts as part of their defense, explaining that they would state their position at the commencement of the hearings. At the opening of the hearings respondent made an oral motion for dismissal, urging for the first time that the Commission was barred from proceeding, in view of the court litigation and the alleged multiplicity of suits, as well as principles of *res judicata*.

Counsel also stated that, in addition to refraining from offering expert testimony, as previously announced, they would not even cross-examine complaint counsels' expert witnesses. They further stated that, in order to bring the present proceedings with precedents relied on by them, they amended their answers to admit all non-medical facts, which would include individual liability of individual respondents represented by them if cease and desist orders should issue.

The examiner reserved decision on the motion until after the hearing should be concluded, when the points might be briefed. He also denied an alternative request for continuance pending handing down of the Court of Appeals decision.

Accordingly, the hearings were more or less pro forma except for the testimony of three medical experts produced by complaint counsel, who, however, were not cross-examined by respondents' counsel.

Prior to the hearing herein, the examiner on affidavits, supplemented as directed by him, and on complaint counsels' statement that they were not opposed, granted a motion to dismiss the complaints in this and the companion proceeding in respect to respondent Maxwell Sackheim—Franklin Bruck, Inc., the advertising agency for respondent vitamin companies. Formal dismissal, pursuant to the Rules, is made by the present decision and accompanying order. Prior to hearing, also, there was a motion to dismiss the complaint in respect to respondent Cohen. The motion was opposed by complaint counsel and denied by the examiner.

There was an extensive prehearing conference herein followed

by a prehearing conference order of directions, including a special direction for discovery, on respondents' motion.

After conclusion of the hearings, complaint counsel submitted separate Proposed Findings and Conclusions of Law for this and the companion proceeding. Respondents submitted a joint document for both proceedings, entitled Proposed Findings and Conclusions of Law but actually being a memorandum of law on their point of res judicata and multiplicity of suits. Complaint counsel submitted an answering memorandum of law on these points, and respondents submitted a reply memorandum of law. Thereafter, on May 17, 1965, the Court of Appeals for the Third Circuit filed its opinion in effect affirming the District Court, in issuing its condemnation and injunction decrees, with some modification.

FINDINGS OF FACT (D. 8637)

Re Complaint Par. One ¹

First.—Respondent International Oil & Metals Corporation is a corporation, organized 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 12 East 46th Street, in the city of New York, State of New York. Said corporate respondent conducts its business under the name Life Nutrition.

Second.—Respondents Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt are officers of the corporate respondent International Oil & Metals Corporation and each participates in the preparation, direction and control of the acts and practices of said corporation, including the acts and practices hereinafter set forth. The addresses of respondents Leon Potash and Adolf W. Goldschmidt are the same as that of said corporate respondent. The address of respondent Henry D. Cohen is 377 Crane Street, in the city of Orange, State of New Jersey.

* * * * *

The above Findings First and Second are supported by admissions in the answer filed herein, dated October 5, 1964, as amended by admissions of record, TR 27:22-25,² continuing at TR 28:1-7, TR 30:10-17 (individual respondents), and TR 31:15-22.

¹ This numbering (One, Two, etc.) follows the numbering of the paragraphs in the complaint. The numbering of each paragraph here (First, Second, etc.) follows the numbering of the Proposed Findings of Fact of complaint counsel.

² TR 27:22-25 means Transcript of Testimony, page 27, lines 22 through 25.

Re Complaint Par. Two

Third.—Respondents International Oil & Metals Corporation, Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt have for some time last past and up until issuance of the complaint herein, 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. (Commencing at or about the time of the issuance of the complaint, the business activities of respondent vitamin corporation and respondent Cohen were restrained by an order issued by a U.S. District Court.)

* * * * *

The above Finding Third is supported by admissions in the answer filed October 5, 1964, as amended by admissions of record, TR 27:22–25, TR 28:1–7, TR 30:10–17, TR 31:15–22 (up to issuance of complaint).

Fourth.—The designations used by said respondents for said preparations, the formulas thereof and directions for use are as follows:

- (1) *Designation:* Life Nutrition High-Potency Vitamin-Mineral Capsules
Formula M.

<i>Formula:</i>	<i>% Min. Daily Req.</i>
Vitamin A (Palmitate) 6,700 USP Units	167.5%
Vitamin D (Irrad. Ergost.) 500 USP Units	125%
Vitamin B ₁ (Mononitt) 5 mg.	500%
Vitamin B ₂ (Riboflavin) 2.5 mg.	208%
Vitamin B ₆ (Pyridoxine Hydrochloride) 0.25 mg.	**
Vitamin B ₁₂ 2 mcg.	**
Vitamin C 55 mg.	183.3%
Niacinamide 20 mg.	200%
Calcium Pantothenate 3 mg.	***
Vitamin E 2 I.U.	**
Vitamin K (Menadione) 0.5 mg.	**
Citrus Bioflavonoid Complex 5 mg.	***
Biotin 2.5 mcg.	***
Sodium Caseinate 50 mg.	***
Choline Bitartrate 25 mg.	***
Inositol 15 mg.	***
l-Lysine Monohydrochloride 5 mg.	**
Calcium (from DiCalcium Phosphate, Anhydrous) 25 mg.	3.3%
Phosphorus (from Dicalcium Phosphate, Anhydrous) 20 mg.	2.7%
Copper (from Copper Sulphate, Monohydrate) 0.45 mg.	**

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Iron (from Ferrous Sulfate, Dried) 10.0 mg.	100.0%
Magnesium (from Magnesium Sulfate, Dried) 1.0 mg.	**
Manganese (from Manganese Sulfate) 0.3 mg.	***
Potassium (from Potassium Sulfate) 1.5 mg.	**
Zinc (from Zinc Sulfate) 0.1 mg.	***
Sulfur (from the Sulfates) 3.0 mg.	***

Directions: Average dosage for Adults: One Capsule Daily. Food Supplement—For dietary Purposes Only.

- (2) *Designation:* Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W.

<i>Formula:</i>	<i>% Min. Daily Req.</i>
Vitamin A (Palmitate) 6,700 USP Units	167.5%
Vitamin D (Irrad. Ergost.) 670 USP Units	167.5%
Vitamin B ₁ (Mononitt) 4.3 mg.	430%
Vitamin B ₂ (Riboflavin) 2.0 mg.	166%
Vitamin B ₆ (Pyridoxine Hydrochloride) 0.5 mg.	**
Vitamin B ₁₂ 3.0 mcg.	***
Vitamin C 75 mg.	250%
Niacinamide 15 mg.	150%
Calcium Pantothenate 5 mg.	***
Vitamin E 2 I.U.	**
Vitamin K (Menadione) 0.4 mg.	**
Citrus Bioflavonoid Complex 5 mg.	***
Biotin 2.5 mcg.	***
Sodium Caseinate 50 mg.	***
Choline Bitartrate 20 mg.	***
Inositol 10 mg.	***
Liver (whole Dessicated) 10 mg.	
L-Lysine Monohydrochloride 5 mg.	**
Calcium (from DiCalcium Phosphate, Anhydrous) 25 mg.	3.3%
Phosphorus (from DiCalcium Phosphate, Anhydrous) 20 mg.	2.7%
Copper (from Copper Sulfate, Monohydrate) 0.45 mg.	**
Iron (from Ferrous Sulfate, Dried) 15.0 mg.	150%
Magnesium (from Magnesium Sulfate, Dried) 1.5 mg.	**
Manganese (from Manganese Sulfate) 0.3 mg.	***
Potassium (from Potassium Sulfate) 1.5 mg.	**
Zinc (from Zinc Sulfate) 0.5 mg.	***
Sulphur (from the Sulfates) 12.0 mg.	***

Directions: Average Dosage for Adults: One Capsule Daily. Food Supplement—For Dietary Purposes Only.

* Minimum daily requirement.

** Minimum daily requirement not established.

***Need in human nutrition not established.

The above Finding Fourth is supported by admissions in the answer filed October 5, 1964, as amended by admission of record at TR 27:22-25, TR 28:1-7, TR 30:10-17, and TR 31:15-22.

Re Complaint Par. Three

Fifth.—Respondents International Oil & Metals Corporation, Leon Potash, Henry D. Cohen and Adolf W. Goldschmidt cause the said preparations, when sold, to be transported from their establishment in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents 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 substantial.

* * * * *

The above Finding Fifth is supported by admissions in the answer filed October 5, 1964, as amended by admission of record at TR 27:22-25, TR 28:1-7, TR 30:10-17, and TR 31:15-22.

Re Complaint Par. Four

Sixth.—In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning 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, magazines and other advertising media, and by means of circulars and brochures, 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.

* * * * *

The above Finding Sixth is supported by admissions in the answer filed October 5, 1964, as amended by admission of record at TR 27:22-25, TR 28:1-7, TR 30:10-17, and TR 31:15-22.

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Re Complaint Par. Five

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

Important Nutritional News . . . AT LAST! Here's the electrifying news you've hoped for! We now offer two remarkable formula—one for men and one for women—each of which combines the powers of at least 26 precious ingredients to help you achieve a feeling of increased pep and energy if you are otherwise normally healthy but suffer from a deficiency of these vitamins and minerals.

* * * * *

TWO Truly Comprehensive Safe High Potency Vitamin Plans including SODIUM CASEINATE and CITRUS BIOFLAVONOID COMPLEX MAY HELP YOUR BODY TO INCREASED PEP, ENERGY, and WELL-BEING.

* * * * *

Without these precious vitamins and minerals—in sufficient amounts over a long period—you cannot hope to feel your best in mind and body. You lose strength and energy—you feel tired, nervous, and depressed, and you may pay dearly in lowered resistance to disease—lowered efficiency and earning power—inability to give your family the loving care and companionship that makes for a happy, successful home life.

* * * * *

TWO SPECIAL PLANS: [1] For MEN [2] For WOMEN—Tailored to Your Needs.

* * * * *

VITAMIN ADDITIVE For Folks Over 40 . . . TIRED DURING THE DAY? . . . WORN OUT AT NIGHT? LIFE NUTRITION'S EXCLUSIVE FORMULA BRINGS YOU HIGH-POTENCY VITAMIN-MINERAL CAPSULES FOR EXTRA PEP AND ENERGY.

* * * * *

"Our Fights Have Turned to Kisses" It's hard to believe that my wife and I used to fight. . . . To correct this condition we began taking Life Nutrition Capsules—just one a day! Before long we had more pep, our dispositions improved, and we were back in each other's arms! . . .

* * * * *

"I Was So Worried . . . MY Husband Slept All Day . . . Every Sunday" What can you do when your husband acts like an old man . . . when he doesn't enjoy anything better than sleeping all day Sunday, and is always "too tired" to have fun—go visiting, to a movie, dancing? What's the answer for a man who has lost his pep and energy while still young?

Those questions used to worry me all the time. For some unknown reason, my husband had been robbed of his energy and vitality; and I just didn't know what to do. Then I saw a Life Nutrition ad in the newspaper. It told how men-and women (who are otherwise normally healthy)-may feel worn-out, nervous and irritable due to an easily corrected deficiency of vitamins in their diet.

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Initial Decision

Thousands of people had increased their pep and vigor through the help of the Life Nutrition Plan. I thought perhaps it could help my husband, too, so I sent for a trial supply. They made my husband feel like a new man-as happy and energetic as when we were first married.

If you want to help your husband, send for a 30-day trial supply of Life Nutrition High-Potency Capsules today!

* * * * *

I always felt simply "run-down." People were thinking of me as a "spoilsport." I didn't know why until my doctor put me wise. He told me that I acted like a man much older than myself, and explained why I felt "tired" . . . Well, I put off doing anything about my condition-until one day I sent for a 30-day trial supply of high-potency Life Nutrition Capsules . . . In a short time, I began to feel like a new man! . . .

The above Finding Seventh is supported by the evidence herein. The above statements and representations are contained in respondents' advertising in evidence as CX 38C through 39D. Respondents' counsel admitted on the record that said exhibits, pertaining to D. 8637, are true and exact copies of advertisements disseminated and caused to be disseminated by respondents. (See TR 71:12-25, TR 72: 1-8, 18-25, and TR 73:1.)

Re Complaint Par. Six

Eighth.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that Life Nutrition High-Potency Vitamin-Mineral Capsules are a new medical and scientific discovery and achievement.

* * * * *

The above Finding Eighth is supported by the advertising statements, claims and representations in CX 38C ("electrifying news," "new improved formula," "finally a formula that really works"), CX 38D ("New Improved Life Nutrition Formula"), CX 39A and 39B.

Ninth.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that Life Nutrition High-Potency Vitamin-Mineral Capsules Formula M are distinctively suited to the needs of men.

* * * * *

The above Finding Ninth is supported by CX 38C ("Special Plan For Men and one For Women"), CX 38D ("TWO SPECIAL PLANS: (1) For MEN (2) For WOMEN"), CX 38E ("High Power Formula for Men . . ."), and by CX 39A, B, C.

Tenth.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W are distinctively suited to the needs of women.

* * * * *

The above Finding Tenth is supported by CX 38C and 38D (see Finding Ninth, *supra*), CX 38E ("Special High-Potency Formula For Women"), and CX 38H ("LIFE NUTRITION PLAN FOR WOMEN").

Eleventh.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that persons past forty years of age have a particular need for Life Nutrition High-Potency Vitamin-Mineral Capsules.

* * * * *

The above Finding Eleventh is supported by CX 38G ("VITAMIN ADDITIVE For Folks Over 40," and statements under said caption).

Twelfth.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that Life Nutrition High-Potency Vitamin-Mineral Capsules increase and stimulate sexual vitality.

* * * * *

The above Finding Twelfth is supported by CX 38E (Heading, "Our Fights Have Turned to Kisses" and sentence under next heading, "What can you do when your husband acts like an old man. . . ?"); CX 38H and 39C.

Thirteenth.—Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that the use of Life Nutrition High-Potency Vitamin-Mineral Capsules and each of the ingredients therein will be of benefit in the treatment and relief of tiredness, nervousness, depression, loss of strength and energy, loss of happiness, loss of a sense of well-being, and appearing and feeling older than one should.

* * * * *

The above Finding Thirteenth is supported by CX 38C ("ashamed to always to be so tired," "I began to feel like a new

man,!" "feel ten years younger in just 30 days," "have the pep and glow I last had years ago"), and CX 38D ("Without these precious vitamins . . . you feel tired, nervous and depressed . . ."). See also 38E, G and H, 39A, B and C.

Medical Findings

Re Complaint Par. Seven

Fourteenth.—Life Nutrition High-Potency Vitamin-Mineral Capsules are not a new medical or scientific discovery or achievement.

* * * * *

The above Finding Fourteenth is supported by the testimony of Dr. McGanity (TR 148–49), Dr. Sappington (TR 186), and Dr. Shank (TR 217).—Their testimony in regard to Vitasafe products is also applicable to Life Nutrition products.

Fifteenth.—Life Nutrition High-Potency Vitamin-Mineral Capsules Formula M are not distinctively suited to the needs of men.

* * * * *

The above Finding Fifteenth is supported by the testimony of Dr. McGanity (TR 153), Dr. Sappington (TR 187–88), and Dr. Shank (TR 218).

Sixteenth.—Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W are not distinctively suited to the needs of women.

* * * * *

The above Finding Sixteenth is supported by the testimony of Dr. McGanity (TR 153), Dr. Sappington (TR 188), and Dr. Shank (TR 219).

Seventeenth.—Neither adults past forty years of age nor adults of any other age group have a special need for Life Nutrition High-Potency Vitamin-Mineral Capsules.

* * * * *

The above Finding Seventeenth is supported by the testimony of Dr. McGanity (TR 164), Dr. Sappington (TR 188–89), and Dr. Shank (TR 219).

Eighteenth.—Life Nutrition High-Potency Vitamin-Mineral Capsules will not increase or stimulate sexual vitality.

* * * * *

The above Finding Eighteenth is supported by the testimony of Dr. McGanity (TR 166), Dr. Sappington (TR 189), and Dr. Shank (TR 220).

Nineteenth.—The use of Life Nutrition High-Potency Vitamin-Mineral Capsules will not be of benefit in the treatment or relief of tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should, except in a small minority of persons whose tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than they should is due to a deficiency of Vitamin B₁ (Thiamine Monoitrate), Vitamin B₂ (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide. All the remaining ingredients in these preparations are of no benefit in the treatment or relief of said symptoms.

* * * * *

The above Finding Nineteenth is supported by the testimony of the three experts called by complaint counsel:

Dr. McGanity—TR 127, 129 (neuroses, infections, etc.), and 147, et seq. (less than 1%;. Also TR 133 (small percentage); the Vitasafe testimony applying also to Life Nutrition preparations, which contain essentially the same ingredients as Vitasafe, at generally lower dosage levels.

Dr. Shank—TR 212-13 (vitamin content of inadequate quantity), TR 215 (iron content of inadequate quantity), TR 215, 213 (3 to 5%), TR 216, 217 (vitamin deficiency very infrequent).

Dr. Sappington—TR 184, 194 (inadequate Vitamin A for advertised symptoms), TR 190:6-9, 192 (insufficient dosage levels, Vitasafe), TR 194 (iron amount clinically insignificant). See, however, TR 192-93 (possible benefit over long period if vitamin deficiency).

Complaint counsel, as part of their Proposed Findings and Conclusions of Law, have submitted an extended discussion of the testimony of these doctors insofar as it supports this Proposed Finding Nineteenth. Although the examiner does not regard the testimony of the doctors, read as a whole, as absolutely conclusive to support the proposed finding in every detail, it is definitely persuasive in support of the proposed finding, which has been adopted by the examiner as proposed, particularly since there is no contradictory medical testimony, respondents having submitted none.

Re Complaint Par. Eight

Twentieth.—Through the use of the statements in the afore-said advertisements, and others similar thereto not specifically set

herein, respondents have also represented, and are now representing, directly and by implication to persons of both sexes and all ages who experience feelings of tiredness, nervousness, depression, loss of strength and energy, loss of happiness, loss of a sense of well-being, and appearing and feeling older than one should, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the aforementioned 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 the great majority of persons, or of any age, sex or other group or class thereof, who experience the symptoms of tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should, such symptoms are not caused by a deficiency of one or more of the nutrients provided by Life Nutrition High-Potency Vitamin-Mineral Capsules, and that in such persons the said preparations will be of no benefit.

* * * * *

The above Finding Twentieth is supported by advertised statements, claims and representations in CX 38, 39. See also Finding Nineteenth, *supra*.

CONCLUSIONS OF LAW (D. 8637)

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.
2. The dissemination by the respondents of the false advertisements, as aforesaid, constitutes unfair and deceptive acts and practices in commerce, in violation of § 5 and § 12 of the Federal Trade Commission Act.
3. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public.
4. The term respondents as above used in these conclusions shall not be deemed to include respondent Maxwell Sackheim—Franklin Bruck, Inc. A motion to dismiss in respect to this respondent was granted by the examiner prior to the hearing, and is duly taken into account in this decision, as provided for by § 3.6(e) of the Rules. The complaint must be and is dismissed in respect to said respondent.

NOTE ON MEDICAL EVIDENCE

The "Discussion as to Medical Evidence" appearing after the Findings and Conclusions in the companion case, D. 8636, may be read in connection with the present decision.

Summarizing, it is believed that the consideration that the medical testimony in the two proceedings was not subjected to cross-examination or exposed to defense medical testimony, should not, by indirection, be utilized to weaken this testimony, which is sufficient on its face. The medical testimony also receives support, in an indirect way, from the decrees and opinions of the District Court and the Court of Appeals in the court litigation.

Moreover, it is the examiner's opinion that *Matter of Lanolin Plus, Inc.* (Rybutol), D. 8150 (1962) [61 F.T.C. 534], cited and quoted by complaint counsel, is pertinent, if only on the question of inferences or conclusions to be drawn from the expert testimony. Complaint, counsels' Chart (CX 51) shows that the ingredients of respondents' products are much like those of Rybutol.

RES JUDICATA

MULTIPLICITY OF SUITS

Respondents moved to dismiss at the commencement of the hearing herein on the ground that the court litigation and decrees are res judicata and also that there is multiplicity of suits or proceedings.

The motion is hereby denied in the present proceeding on the grounds and reasoning stated in the decision rendered in the accompanying proceeding, D. 8636. Summarized, the reasons are:

(1) The motion made after hearing commenced, after Commission personnel had gone to New York City, and after witnesses proceeded from Philadelphia to New York City, where respondents and their counsel are located, is untimely, a violation of orderly prehearing procedure, and vexatious.

(2) The defense of *res judicata* is by its nature hardly one to be invoked by the unsuccessful party in the other litigation. Here respondents have been unsuccessful both in the District Court actions and the Court of Appeals. In the two cases³ relied on by them the res judicata defense was raised by parties vindicated in the other litigation.

(3) The defense of multiplicity of suits is hardly available where, as here, different and further relief with wider application

³ *Lee Company v. Federal Trade Commission*, 118 F. 2d 583 (8th Cir. 1940). *United States v. 14 Cartons * * * AYDS*, not officially reported (E.D. Mo., 1946).

is available in the challenged forum. The Food and Drug Act applies only to labeling, and advertising, or the like, "accompanying" the articles. The *Foods Plus*⁴ case relied on by respondents does not hold to the contrary, but merely that radio talks may be resorted to in a Food and Drug case to ascertain if proper directions, considering medical claims in the talks, appear on the labels, as required by statute. Respondents cannot claim sanctuary from the Commission's jurisdiction over misrepresentation and advertising generally, merely by reason of having been found to have mislabeled under the Food and Drug Act.

(4) The defenses invoked here by respondents involve equitable considerations, and no such considerations urged by respondents outweigh the equities on the other side.

Form of Order

The order issued here will follow the order proposed in the complaint. All the allegations have been proved, and indeed are hardly controverted. The misrepresentations are in a dangerous field, exploiting human suffering and complaints, and possibly even diverting users from competent medical attention. The drastic U.S. District Court injunction in the Food and Drug litigation, rather than being an argument for no order here at all, is an argument for a broad and drastic order here, but one covering both general advertising and misrepresentation, not merely mislabeling. It may be noted that respondent Vitasafe Corporation has been in trouble with the Federal Trade Commission before, and apparently was ordered in 1964 by another U.S. District Court to pay \$18,000 in civil penalties for nine violations of a Commission cease and desist order issued in 1957.

ORDER

It is ordered, That respondents International Oil & Metals Corporation, a corporation, trading as Life Nutrition or under any other name, or names, and its officers; and Leon Potash, Henry D. Cohen, and Adolf W. Goldschmidt, individually and as officers of said corporation; and said respondents' agents, representatives and employees do forthwith cease and desist from, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Life Nutrition High-Potency Vitamin-Mineral Capsules Formula W" or "Life

⁴ *United States v. Articles of Drug . . . Foods Plus, Inc.*, 239 F. Supp. 465, 68 (U.S.D.C., N.J., 1965).

Nutrition High-Potency Vitamin-Mineral Capsules Formula M" or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold:

A. 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:

1. That said preparation is a new medical or scientific discovery or achievement;

2. That said preparation is distinctively suited to the needs of men;

3. That said preparation is distinctively suited to the needs of women;

4. That adults of any age group have a special need for said preparation;

5. That said preparation will increase or stimulate sexual vitality;

6. That the use of said preparation will be of benefit in the treatment or relief of tiredness, nervousness, depression, loss of strength or energy, loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Vitamin B₁ (Thiamine Mononitrate), Vitamin B₂ (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide, and further, unless such advertising clearly and conspicuously reveals the fact that in the great majority of persons, or of any age, sex, class or other 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;

7. That the ingredients in said preparation other than Vitamin B₁ (Thiamine Monitrate), Vitamin B₂ (Riboflavin), Vitamin C (Ascorbic Acid) or Niacinamide, will be of benefit in the treatment or relief of tiredness, nervousness, depression, loss of strength or energy,

loss of happiness, loss of a sense of well-being, or appearing or feeling older than one should.

B. 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 any such preparation, 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 A hereof.

It is further ordered, That the complaint herein is dismissed, and hereby declared to be dismissed, as to the following respondent Maxwell Sackheim—Franklin Bruck, Inc., a corporation.

FINAL ORDER

This matter having been heard by the Commission on an appeal by respondents from the initial decision of the hearing examiner, and upon briefs and argument in support thereof and in opposition thereto; and

The Commission having rendered its decision that the findings of fact and conclusions of law in the initial decision and the order proposed by the examiner should be adopted as the findings, conclusions and order of the Commission, except as hereinafter set forth:

It is ordered, That the findings of fact in the initial decision be, and they hereby are, adopted as the findings of the Commission with the following exceptions:

1. Paragraph Second shall be, and it hereby is, modified to strike the name of Henry D. Cohen from the first line thereof;
2. Paragraph Third be, and it hereby is, modified to strike the name of Henry D. Cohen from the second line thereof;
3. Paragraph Fifth be, and it hereby is, modified to strike the name of Henry D. Cohen from the second line thereof;
4. A new paragraph First (a), reading as follows be, and it hereby is, inserted after the conclusion of Paragraph First:
"In January, 1960, prior to joining respondent International Oil & Metals Corporation, respondent Henry D. Cohen became the president of Knoll Pharmaceutical Corp., a manufacturer of ethical drugs. Under his employment contract with Knoll Pharmaceutical Corp., which runs until Novem-

ber 4, 1971, he is required to devote his full working time to the interests of that company. Early in 1961, he became a secretary and director of respondent International Oil & Metals Corporation, which position he held until December, 1964, when he resigned. During this period he played no active part in the management of the corporation and did not participate in its policy decisions."

It is further ordered, That the conclusions of law in the initial decision be, and they hereby are, adopted as the conclusions of law of the Commission except that Paragraph 4 thereof be, and it hereby is, modified to read as follows:

"The term respondents as above used in these conclusions, except where specifically noted, shall not be deemed to include respondents Henry D. Cohen and Maxwell Sackheim-Franklin Bruck, Inc. The motion to dismiss in respect to respondent Maxwell Sackheim-Franklin Bruck, Inc. was granted by the examiner prior to the decision, and is duly taken into account in this decision, as provided for by §3.6(e) of the Rules. The complaint must be and is dismissed with respect to this respondent. With respect to respondent Henry D. Cohen the complaint is dismissed without prejudice."

It is further ordered, That the order proposed by the hearing examiner be, and it hereby is, adopted as the order of the Commission, except that the name of Henry D. Cohen shall be deleted from the first paragraph thereof and an additional paragraph shall be inserted in the order following the final paragraph in the proposed order:

"*It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to Henry D. Cohen, without prejudice to the right of the Commission to take such further corrective action as future events may warrant."

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.

Complaint

IN THE MATTER OF

CLAIROL INCORPORATED

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 8647. Complaint, Sept. 15, 1964—Decision, June 24, 1966

Order requiring a New York City manufacturer of beauty preparations to cease paying discriminatory promotional allowances to competing customers in two channels of trade, beauty salons and regular retailers selling to consumers for home use, in the sale of its hair coloring products, in violation of Section 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Clairol Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1290 Avenue of the Americas, New York, New York. Respondent Clairol Incorporated is a wholly owned subsidiary corporation of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of beauty preparations, principally hair coloring products, hereinafter collectively referred to as beauty products. Respondent is now and has been, at all times referred to herein, one of the largest concerns in the United States in volume of sales of hair coloring products. Respondent sells its beauty products to a large number of customers throughout the United States. Respondent's customers include beauty salons, beauty supply dealers, beauty schools, department stores, drug wholesalers and drug retailers.

PAR. 3. Respondent sells and distributes its beauty products in