

Complaint

IN THE MATTER OF

HEMCA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1342. Complaint, May 24, 1968—Decision, May 24, 1968*

Consent order requiring a Grand Prairie, Texas, franchiser of retail meat stores to cease using bait advertising in the sale of its meat products, misrepresenting the weight loss due to cutting and trimming, misbranding meat which is below U.S.D.A. grade standards, and furnishing its licensees with means of deception.

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 Hemca, Inc., a corporation, and Marvin J. Hutcheson, individually and as an officer of 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 Hemca, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 111 NE. 11th Street, Grand Prairie, Texas.

Respondent Marvin J. Hutcheson is an officer of the corporate respondent. Said individual respondent formulates, directs, and controls the acts and practices of the corporate respondent, and certain of their franchised dealers, distributors, and licensees, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the business of licensing and franchising the operation of stores in various States of the United States which sell meat and meat products to the public.

Respondents, by and through said franchised dealers, distributors and licensees, are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products, to members of the purchasing public. Said meat and meat products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

Complaint

73 F.T.C.

PAR. 3. In the course and conduct of their business and at all times mentioned herein, pursuant to agreements with said franchised dealers, distributors, and licensees, respondents have disseminated and do now disseminate advertising by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertising material for use in newspapers of general circulation, for the purpose of inducing, or which is likely to induce, the purchase of meat and meat products; and have disseminated and caused the dissemination of advertising material by various means for the purpose of inducing and which were likely to induce the purchase of meat and meat products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondents have furnished and supplied to said franchised dealers, distributors, and licensees, who sell said meat and meat products to the public, various types of advertising literature, including, but not limited to, sales manuals, brochures, and advertising mats, and have instructed, assisted and in other ways cooperated with them in the advertising of said products in newspapers of general circulation.

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

U.S.D.A. CHOICE BEEF HALVES 39¢ lb.

U.S.D.A. Graded and Inspected HEAVY BEEF HALVES lb. 29¢.

U.S. Government Inspected GUARANTEED TENDER AND DELICIOUS BEEF HALVES 29¢ lb. BEEF HINDQUARTERS 33¢ lb.

U.S.D.A. CHOICE SELECT CUT ORDERS CORN FED TENDER AGED, 59 to 79¢ lb.

Satisfaction Guaranteed.

Tender and Delicious Hindquarters, 33¢ lb.

Satisfaction Guaranteed

All Hutcheson Meats are guaranteed to meet your satisfaction or your order will be cheerfully replaced or your money refunded within 10 days...

HUTCHESON MEAT

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning, not specifically set forth herein, respondents and their franchised dealers, distributors and licensees have represented, and do represent directly or by implication, that:

(1) Offers set forth in said advertisements are bona fide offers to sell products of the kind therein described at the prices stated therein.

(2) The advertised meats have been inspected and graded by the United States Department of Agriculture and labeled by that Department according to the determined grade; and that as a result

thereof a specific grade of meat so labeled will be readily identifiable by visual inspection of the label, from a different grade of the same type of meat, and will be distinguishable from similar meats which have not been inspected and graded by the Department of Agriculture and which because of this fact bear no inspection or grading label.

(3) The advertised meats are guaranteed and a purchaser who is not satisfied with the product purchased by him will, upon request, receive a refund of his entire purchase price.

PAR. 6. In truth and in fact:

(1) The offers set forth in said advertisements, and other offers not set forth in detail herein, were not, and are not, bona fide offers to sell the products appearing in the advertisements at the advertised prices but, to the contrary, are made to induce prospective purchasers to visit the stores and places of business of respondents' franchised dealers, distributors and licensees for the purpose of purchasing the said advertised products. When prospective purchasers, in response to said advertisements, attempt to purchase the advertised products, salesmen of the said franchised dealers, distributors and licensees make no effort to sell such products, but, in fact disparage them in a manner calculated to discourage the purchase thereof, and attempt to, and frequently do, sell much higher priced products.

(2) Not all of the advertised meats have been inspected and graded by the United States Department of Agriculture and the practice of respondents' franchised dealers, distributors and licensees of removing the inspection and grading stamps and labels placed on meats which have been inspected and graded by that Department, and of substituting their own labels and grade names in the place and stead thereof, precludes prospective purchasers from readily ascertaining by visual inspection the grade of any specific cut of meat previously graded and inspected as aforesaid, or from distinguishing it from similar meat which has not been inspected and graded by the United States Department of Agriculture.

(3) The advertised guarantee fails to clearly and conspicuously set forth the nature and extent of said guarantee. Contrary to the representation, appearing therein, that the entire amount of the purchase price will be refunded on the request of an unsatisfied purchaser, any refund made by respondents' franchised dealers, distributors or licensees is based on the weight of the product returned. No refund is made on that portion of the original purchase which is lost by the act of cutting and trimming the meat, regardless of the fact that the purchaser pays a weight price based on the untrimmed product.

Therefore, the advertisements referred to in Paragraph Four 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, and the representations referred to in Paragraph Five are false, misleading and deceptive.

PAR. 7. By use of the aforesaid practices, respondents have placed in the hands of said franchised dealers, distributors, and licensees, the means and instrumentalities by and through which they may mislead the purchasing public; and use by respondents and their franchised dealers, distributors and licensees, of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of the aforesaid products, including higher priced products than those advertised because of said mistaken and erroneous belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and constituted, and now constitute 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 respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days,

now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hemca, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 111 NE. 11th Street, in the city of Grand Prairie, State of Texas.

Respondent Marvin J. Hutcheson is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Hemca, Inc., a corporation, and its officers, and Marvin J. Hutcheson, individually and as an officer 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 meat and other food products, do forthwith cease and desist from:

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

(a) That any products are offered for sale, when the purpose of such representations is not to sell the offered products, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such an offer is not a bona fide offer to sell such product.

(c) That any product is guaranteed unless the nature, conditions and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Disseminating, or causing the dissemination of any advertisement by means of United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously indicate:

(a) That beef sides, hindquarters, and other untrimmed pieces of meat offered for sale are sold subject to weight loss due to cutting, dressing, and trimming;

Decision and Order

73 F.T.C.

(b) That the price charged for such meat is based on the weight before cutting, dressing, and trimming occurs;

(c) The average percentage of weight loss of such meat due to cutting, dressing and trimming.

3. 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 fails to clearly and conspicuously include:

(1) When United States Department of Agriculture graded meat is advertised which is below the grade of "USDA Good," the statement "This meat is of a grade below U.S. Prime, U.S. Choice, and U.S. Good."

(2) When meat not graded by United States Department of Agriculture is advertised:

(a) The statement "This meat has not been graded by the United States Department of Agriculture," and

(b) If such meat is a portion of the total meat offered a statement indicating the portion which is ungraded, and the percentage, by weight, of the total meat offered.

4. 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 meat or other food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order or fails to comply with the affirmative requirements of Paragraphs 2 and 3 hereof.

5. Discouraging the purchase of, or disparaging in any manner, or encouraging, instructing or suggesting that others discourage or disparage, any meat or other food products which are advertised or offered for sale in advertisements, disseminated or caused 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.

6. Supplying or placing in the hands of any franchised dealer, distributor, licensee, or any salesman or agent thereof, sales manuals, brochures, advertising mats, or any other advertising, or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of meat or other food products in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which contain any of the false, misleading or deceptive representations prohibited in

973

Complaint

this order, or which are designed for use, or could be used, to carry out or enhance the practices prohibited in this order.

7. Failing to deliver a copy of this Order to Cease and Desist to all operating divisions of the corporate respondent and to all officers, managers and salesmen, both present and future, of each franchised dealer, distributor, and licensee; and to any other person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative, or employee; and to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

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.

IN THE MATTER OF

STERLING DRUG INC., ET AL.

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

Docket C-1343. Complaint, May 28, 1968—Decision, May 28, 1968

Consent order requiring a drug distributor and its advertising agency of New York City, to cease making misleading therapeutic claims in advertising its "Ironized Yeast" tablets, "Super Ironized Yeast" liquid and similar drug preparations.

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 Sterling Drug Inc., a corporation, and Thompson-Koch Company, 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 Sterling Drug Inc., is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business at 1450 Broadway in the city of New York, State of New York.

Respondent Thompson-Koch Company, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its office

Complaint

73 F.T.C.

and principal place of business located at 1450 Broadway, in the city of New York, State of New York.

PAR. 2. Respondent Sterling Drug Inc., through the instrumentality of Glenbrook Laboratories, a division of said corporate respondent, is now, and has been for some time last past, engaged in the sale and distribution of preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

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

1. Designation: "Ironized Yeast"

Formula: Six tablets contain:

Ferrous Sulfate, exsiccated grains (100 mg. iron)-----	5.25
Vitamin B ₁ (from high potency primary dried brewers yeast) mg----	2.25

Directions: Ironized Yeast is offered for use in iron deficiency anemia. In order to get the best results it must be taken *regularly and faithfully*. In the dosage recommended. Ironized Yeast contains 10 times the minimum daily requirement of iron and 2¼ times the minimum daily requirement of Vitamin B₁. In addition, it contains other Vitamin B complex factors natural to this type of yeast.

For adults and children over 6 years of age, the minimum daily dose is 6 tablets. Take 2 with water or other liquid at meal time. Tablets may be crushed or mixed with cereals or other foods.

2. Designation: "Super Ironized Yeast"

Formula: Each fluid ounce (2 tablespoonfuls) contains:

Iron (as iron ammonium citrate)-----	100mg.
Thiamine hydrochloride (B ₁)-----	5mg.
Riboflavin (B ₂)-----	5mg.
Pyridoxine hydrochloride (B ₆)-----	3mg.
Vitamin B ₁₂ (cyanocobalamin)-----	10mg.
Nicotinamide -----	100mg.
Panthenol -----	5mg.
Liquid Yeast Concentrate-----	1ml.
Alcohol -----	12% by volume.

Directions: This pleasant-tasting iron tonic and high potency vitamin supplement may be taken regularly whenever needed. SUPER IRONIZED YEAST supplies large quantities of iron to combat the tired, dragged out feeling associated with common iron deficiency anemia. This iron is supplied in the form of an elixir to *build strength fast*. This elixir also supplies your body with liberal amounts of multi-vitamins essential to glowing, robust health. You can take SUPER IRONIZED YEAST any time you need it with complete confidence. Just be sure you use it regularly for best results.

Adults—As a therapeutic tonic (Iron, Thiamine, Riboflavin, Nicotinamide deficiencies): 1 tablespoonful at each meal or as directed by physician. As a dietary supplement: 1 tablespoon daily at breakfast or any mealtime. Children 6 to 12 years—one half the adult dose.

The above designated preparations are sometimes referred to collectively as "Ironized Yeast."

PAR. 3. Respondent Sterling Drug Inc., causes the said preparations, when sold, to be transported from places of business in the States of New York and Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Said 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.

Respondent Thompson-Koch Company, Inc., is now and for some time last past has been the advertising agency of respondent Sterling Drug Inc., and its Glenbrook Laboratories Division, and now prepares and places, and for some time last past has prepared and placed, for publication, advertising material, including the advertising herein-after referred to, to promote the sale of said preparations.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the preparation referred to in Paragraph Two, above, by the United States Mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements inserted in newspapers and other advertising media, and by means of radio and television broadcasts transmitted by radio and television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and 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, but not all inclusive thereof, of the statements and representations contained in said advertisements, including audio-visual representations in television broadcasts, disseminated as hereinabove set forth, are the following:

VIDEO

George comes through door into living room. He moves slowly, wearily. He looks haggard, worn. He walks to divan where he drops his hat and coat, turns toward easy chair.

AUDIO

ANNOUNCER: Is this you? Tired and worn before the evening begins?

Complaint

73 F.T.C.

VIDEO

AUDIO

George sits down heavily in chair, closes eyes momentarily, rubs his hand over face then reaches for newspaper on table beside him. Opens newspaper starts to read.

Dragging through day after weary day with no pep?

Dissolve to George asleep in chair. Newspaper has fallen to his lap.

Chances are you may have

Picture fades as full screen-lettering "The Gray Sickness" is super-imposed.
* * *

The Gray Sickness (tunnel).

Announcer: The Gray Sickness means you suffer iron deficiency anemia. Ask your doctor. * * *

Words "Builds Strength Fast" pop out of package in synchro with audio.

Ironized Yeast Builds Strength Fast!

Cut to George smiling, full of pep dancing with wife.

Yes, in only 7 days you can start to feel your old self again * * * Just look at George now * * * finished a hard day's work * * * and with energy to spare.

Cut to package of I.Y. Tablets. Super words "60 Tablets—Only 90 Cents."

So get Ironized Yeast. 60 tablets—Only 90 cents.

Cut to package and super "New Liquid Formula."

If you prefer an iron tonic in liquid form * * *

Zoom to S.I.Y. name on package.

Get this brand new formula * * * pleasant-tasting Super Ironized Yeast.

Cut to full screen package. Super "Iron Tonic Plus High-Potency Vitamins."

We call it Super because we've loaded this iron tonic with High-Potency Multi-Vitamins.

Full screen of S.I.Y. tablets packages. Pop in "Liquid 98¢—Tablets 90¢."

Remember—Build strength fast with Ironized Yeast * * * Liquid or tablets.

* * * * *

979

Complaint

VIDEO

AUDIO

Woman slowly, half heartedly, wearily washing dishes. In synchro with audio pop in "Flu, Grippe, Bad Cold."

Announcer: If the Flu, Grippe or a Bad Cold has left you so weak that even washing the breakfast dishes is an effort * * *

Closeup of woman—Super over action words "You Feel Gray."

And you're feeling gray * * * you may suffer iron deficiency anemia.

* * * * *

Man fortyish, doing fast "rock and roll" dance with pretty young woman.

Announcer: Boy, Jim's got it made—

Iris open on head of Jim.

But not long ago * * *

Jim walks into room. He sits down in chair.

Jim dragged through day after weary day with no pep * * *

Jim picks up newspaper and starts to read.

Tired and worn before the evening began.

Cut to Jim asleep in chair with newspaper in his lap.

Never sick enough to stay in bed * * * yet never really well.

Picture fades as full screen lettering "The Gray Sickness" is superimposed.

Jim had The Gray Sickness! (tunnel)
* * * iron deficiency anemia * * *
Now, to combat this condition, doctors usually prescribe an iron tonic.
And * * *

Cut to zoom-up shot of word "New" in burst.

New.

Cue in emblem containing "super."

Super.

Open to full label shot showing S.I.Y.

Ironized Yeast.

To full shot of S.I.Y. carton, pop words "Builds Strength Fast" in synchro with audio.

Is an amazing, effective liquid iron vitamin tonic * * * Builds Strength Fast!

"Builds strength Fast" fades out. Vitamin names, one by one, roll on like screen credits: Vitamin B₁ * * *

We call it Super because we've loaded it with iron and an abundance of essential, high-potency multi-vitamins.

Vitamin B₂ * * * Nicotinamide * * *
Vitamin B₃ * * * Panthenol * * * bottom of screen shows words "High Potency Vitamins."

* * * * *

Complaint

73 F.T.C.

VIDEO

AUDIO

CU of railroad crossing type sign with words "Diet Danger" flashing on and off.	Announcer: What is Diet Danger? Well, if you're on a reducing diet, you may not be
Cut to semi-CU of woman's head.	getting all the essential vitamins and the iron you need to keep up your strength.
Cue in on woman's face. Pop in "Pale, Tired, Worn." Iris open to full scene of	So you are pale, tired, worn * * *
Same woman ironing. Stops and leans on ironing board.	yes, actually look older, but now—you can get
Cut to zoom-up shot of word "New" in burst.	New.
Cue in emblem containing "super"	Super.
Open to full label shot showing S.I.Y.	Ironized Yeast,
* * * * *	
To full shot of S.I.Y. carton, pop words "Builds Strength Fast" in synchro with audio.	The liquid iron-vitamin tonic that Builds Strength Fast!
"Builds Strength Fast" fades out. Vitamin names, one by one, roll on like screen credits: Vitamin B ₁ * * * Vitamin B ₂ * * * Nicotinamide * * * Vitamin B ₆ * * * Panthenol. Bottom of screen shows words "High Potency Vitamins."	We call it Super because it's loaded with an abundance of these essential, high-potency multi-vitamins to give you the normal strength and energy these supply * * * even while you diet!
* * * * *	

When convalescing. * * * to combat iron, thiamine, riboflavin, nicotinamide deficiencies due to bad colds or flu, take one tablespoon at each meal or as directed by physician. Children 6 to 12 years— $\frac{1}{2}$ the adult dose.

WEAK, TIRED, DRAGGED-OUT? * * * You know how miserable it is to drag through day after weary day * * * having to work when you don't feel up to it * * * going around weak, tired, worn. Well symptoms such as these can mean that you have iron deficiency anemia—or you're not getting an adequate supply of vitamins—or both! * * * But here's *one* tonic that effectively combats either or both of these conditions * * * gives you *both* large, strength-building amounts of iron *plus* abundant, high potency multi-vitamins essential to glowing, robust health.

* * * * *

979

Complaint

If you're worn out after a normal day's work . . . tired and weak before the evening begins . . . never really sick, yet never really well . . . you may be suffering from IRON DEFICIENCY ANEMIA. You feel weak, tired, nervous, irritable. . . . (Radio)

* * * * *

Goes to work in 24 hours to build rich red blood that brings new strength to every part of your body! (Newspaper)

* * * * *

SIGNS of IRON-POOR BLOOD * * * Pallor; Weakness; Frequent Headaches; Tiredness; Nervousness; Loss of Appetite; Loss of Energy; Restlessness. (Newspaper)

* * * * *

If the illnesses of winter, such as cold and flu, have left you tired, weak and worn, use SUPER IRONIZED YEAST AS a spring tonic to combat iron, thiamine, riboflavin, nicotinamide deficiencies. Take one tablespoonful at each meal or as directed by physician.

* * * * *

Never Really Sick* * * Never Really Well * * * THE GRAY SICKNESS * * * Iron Deficiency Anemia has been aptly called the GRAY SICKNESS. Not only because its victims have lost their once healthy color, but also because life itself has become gray and drab for them. For you simply cannot enjoy work or play when you have to drag through day after weary day feeling tired, weak and listless. And sleep doesn't seem to refresh you for you wake up tired. * * * Fortunately iron-poor blood responds quickly to proper treatment . . . and normal healthy color, strength and vigor return. (Newspaper)

* * * * *

So if iron-poor blood is slowing down your recovery from Asian Flu, a bad cold or the grippe, get IRONIZED YEAST today. (Radio)

* * * * *

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

(1) That the use of Ironized Yeast and Super Ironized Yeast, and each of them, will be of benefit, safe and effective in the treatment and relief of a deficiency of iron and iron deficiency anemia, and pallor, weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, and restlessness.

(2) That Ironized Yeast and Super Ironized Yeast, and each of them, will increase the strength and energy of every part of the body within 24 hours.

(3) That the vitamins as supplied by Ironized Yeast and Super Ironized Yeast contribute to the effectiveness of these preparations in

the treatment and relief of a deficiency of iron and iron deficiency anemia.

(4) That persons who are dieting have a special need for the nutrients supplied by Ironized Yeast and Super Ironized Yeast.

(5) That Ironized Yeast and Super Ironized Yeast, and each of them, will promote convalescence from colds, influenza and Asian Flu.

PAR. 7. In truth and in fact:

(1) Neither Ironized Yeast nor Super Ironized Yeast will be of benefit in the treatment or relief of weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness except in a small minority of persons in whom such symptoms or conditions are due to a deficiency of one or more of the vitamins provided by these preparations, or to a deficiency of iron or to iron deficiency anemia.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons viewing or hearing such advertisements that in cases of persons of both sexes and all ages who experience weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness, there is a reasonable probability that these symptoms in such cases will respond to treatment by the use of these preparations; and have the capacity and tendency to suggest, and do suggest, that in cases of persons of both sexes and all ages who have a deficiency of iron or who have iron deficiency anemia the preparations can be used safely and effectively in the treatment and relief of a deficiency of iron or of iron deficiency anemia and their symptoms. 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 weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness, these symptoms are not caused by a deficiency of one or more of the vitamins provided by said preparation or by a deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit; and they are additionally misleading in a material respect because they fail to reveal the material fact, when representing that the preparations will be effective for the treatment and relief of a deficiency of iron or of iron deficiency anemia, in adults, and when ascribing symptoms of pallor, weakness, frequent headaches, tiredness, nervous-

ness, loss of appetite, loss of energy, or restlessness, in adults, to a deficiency of iron or to iron deficiency anemia, that, in women of any age beyond the usual child-bearing age and in men of all ages, a deficiency of iron or iron deficiency anemia is almost invariably due to bleeding from some serious disease or disorder and, in the absence of adequate treatment of the underlying cause of the bleeding, the use of the preparations may mask the signs or symptoms of said deficiency or anemia and thereby permit the progression of such disease or disorder.

(2) Neither Ironized Yeast nor Super Ironized Yeast will increase the strength or energy of any part of the body within 24 hours.

(3) The vitamins as supplied by either Ironized Yeast or Super Ironized Yeast do not in any way contribute to the effectiveness of either of these preparations in the treatment or relief of iron deficiency anemia.

(4) Persons who are dieting have no special need for the nutrients supplied by either Ironized Yeast or Super Ironized Yeast.

(5) Neither Ironized Yeast nor Super Ironized Yeast will be of benefit in promoting convalescence from colds influenza, or Asian Flu.

Therefore, the advertisements 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. 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, such agreement providing that the issuance, service and entry of the Commission's decision and order in disposition of the proceeding be stayed until an order disposing of all the issues raised *In the Matter of J. B. Williams Company, Inc., et al.*, Docket No. 8547 [68 F.T.C. 481], shall have become final within the meaning of the Federal Trade Commis-

Decision and Order

73 F.T.C.

sion Act; and such agreement providing further that if the terms of the final order in Docket No. 8547 shall differ from the terms of the order contained in the Hearing Examiner's Initial Decision therein, then the order set forth in the agreement herein shall be modified prior to issuance, service and entry so as to conform in all material and pertinent respects to the final order in Docket No. 8547; and

The Commission having accepted the agreement, issued its complaint forthwith and deferred the entry of its decision and order; and

Counsel for the parties herein having thereafter by joint motion submitted to the Commission for acceptance in agreement containing a consent order, the same being the order of the prior agreement revised so as to conform in all material and pertinent respects to the final order in Docket No. 8547, and additionally containing an admission by the respondents of all the jurisdictional facts set forth in the complaint heretofore issued, copy of which was attached, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted the same, in lieu of the said prior agreement, and such agreement and the said attached complaint having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission having heretofore issued its complaint in the form contemplated by such agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sterling Drug Inc., is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 1450 Broadway, in the city of New York, State of New York.

Respondent Thompson-Koch Company, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 1450 Broadway, 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 respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Sterling Drug Inc., a corporation, and Thompson-Koch Company, Inc., a corporation, and their officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Ironized Yeast the preparation designated Super Ironized Yeast, 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:

(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:

(a) which represents directly or by implication and without qualification that the preparation is an effective remedy for weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness;

(b) which represents directly or by implication that the preparation is a generally effective remedy for weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness;

(c) which represents directly or by implication that the preparation is an effective remedy for weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness in more than a small minority of persons experiencing such symptoms;

(d) which represents directly or by implication that the use of such preparation will be beneficial in the treatment or relief of weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness unless such advertisement expressly limits the claim of effectiveness of the preparation to those persons whose symptoms are due to an existing deficiency of one or more of the vitamins contained in the preparation, or to an existing deficiency of iron or to iron deficiency anemia, and further, unless the advertisement also discloses clearly and conspicuously that: (1) in the great majority of persons who experience such symptoms, these symptoms are not caused by a deficiency of one or more of the vitamins contained in the preparation or by

Syllabus

73 F.T.C.

iron deficiency or iron deficiency anemia; and (2) for such persons the preparation will be of no benefit;

(e) which represents directly or by implication that weakness, frequent headaches, tiredness, loss of appetite, loss of energy, or restlessness are generally reliable indications of iron deficiency or iron deficiency anemia;

(f) which represents directly or by implication that the use of such preparation will increase the strength or energy of any part of the body in any amount of time less than that in which the consumer may actually experience improvement;

(g) which represents directly or by implication that the use of such preparation will promote convalescence from colds, influenza or Asian Flu or any other winter illness;

(h) which represents directly or by implication that the vitamins supplied in such preparation are of any benefit in the treatment or relief of an existing deficiency of iron or iron deficiency anemia;

(i) which represents directly or by implication that persons who are dieting have a special need for the nutrients supplied by such preparation.

(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 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 the affirmative requirements of, Paragraph 1 hereof.

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.

IN THE MATTER OF

SUPREME FREEZER MEATS, INC., ET AL.

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