

Complaint

86 F.T.C.

IN THE MATTER OF

LEVINE, HUNTLEY & SCHMIDT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2718. Complaint, July 29, 1975—Decision, July 29, 1975*

Consent order requiring a New York City advertising agency, in connection with the product Rev-up vitamins or any vitamin and/or mineral product of Commerce Drug Company, Inc. or Del Laboratories, Inc., among other things to cease disseminating unsubstantiated advertisements regarding the efficacy, benefit or need to prospective purchasers of the products.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *Stuart Lee Friedel*, Levine, Huntley & Schmidt, Inc., New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Commerce Drug Company, Inc., Del Laboratories, Inc., * and Levine, Huntley & Schmidt, Inc., corporations, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Commerce Drug Company, Inc., a subsidiary of Del Laboratories, Inc., is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

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PAR. 2. Levine, Huntley & Schmidt, Inc. is a New York corporation with its office and principal place of business located at Ten E. 53rd St., N.Y., N.Y.

PAR. 3. Respondent Commerce Drug Company, Inc. has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a certain vitamin product named "Rev-up, Vitamins For Men," a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

* See p. 399 herein for decision as to these respondents, Docket C-2713.

Each Rev-up capsule contains:

		Upper Limit U.S.R.D.A.*
Vitamin B-1 (Thiamine Mononitrate)	10.00 mgs.	2.25 mgs.
Vitamin B-2 (Riboflavin)	10.00 mgs.	2.60 mgs.
Vitamin B-6 (Phridoxine Hydrochloride)	25.00 mgs.	3.00 mgs.
Vitamin B-12 (Cobalamin Conc.)	10.00 mgs.	9.00 mgs.
Niacinamide	100.00 mcgs.	30.00 mcgs.
Calcium Pantothenate	20.00 mgs.	15.00 mgs.
Folic Acid	0.10 mgs.	0.40 mgs.
Vitamin C (Ascorbic Acid)	100.00 mgs.	90.00 mgs.
Vitamin E (di-Alpha Tocopheryl Acetate) in a base containing Fructose		100.00 I.U. 45.00 I.U.

* United States Recommended Daily Allowance as established by the United States Food and Drug Administration.

PAR. 4. Respondent Del Laboratories, Inc. has been and is now engaged in the manufacturing of cosmetics, proprietary drugs and sundries. It dominates and controls or knew of and tacitly approved the acts and practices of Commerce Drug Company, Inc., as set forth herein.

PAR. 5. Respondent Levine, Huntley & Schmidt, Inc. has been and is now an advertising agency for Commerce Drug Company, Inc. and Del Laboratories, Inc. and has prepared and placed for publication, and caused the dissemination of, advertising material, including but not limited to the advertising referred to herein, to promote the sale of Rev-up vitamins, a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

PAR. 6. Respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have caused Rev-up vitamins, when sold, to be shipped and distributed from their place of business in New York to retail stores and other purchasers located in various other States of the United States.

PAR. 7. In the course and conduct of their business, respondents have disseminated or caused to be disseminated certain advertisements concerning Rev-up vitamins (1) by United States mails and by various means in commerce, including, but not limited to, insertion in newspapers of interstate dissemination and radio broadcasts of interstate transmission, for the purpose of inducing, or which were likely to induce, directly or indirectly, the purchase of Rev-up vitamins, or (2) by various means, for the purpose of inducing, or which were likely to induce, the purchase in commerce of Rev-up vitamins. Each of said respondents' volume of business in commerce is substantial.

PAR. 8. Typical of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following [see p. 402, herein]:

PAR. 9. Through the use of such advertisements and others not specifically set out herein, respondents have represented, directly or by implication, that:

A. The stresses and strains a man undergoes create a condition which will be benefited by consumption of a vitamin product like Rev-up vitamins.

B. Active men need a specially formulated vitamin product like Rev-up vitamins.

C. There is a low-energy period in men from 3 p.m. to 6 p.m. each day.

D. Rev-up vitamins will make one feel like a "new man."

PAR. 10. At the time the representations set forth in Paragraph Nine were made, respondents had no reasonable basis from which to conclude that such representations were true.

Therefore the advertisements and representations referred to in Paragraphs Eight and Nine were and are deceptive and unfair.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have been and are now in substantial competition in commerce with corporations, firms and individuals selling and distributing nonprescription vitamin products.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Levine, Huntley & Schmidt, Inc. has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 13. The use by respondents of the aforesaid deceptive and unfair advertisements has had the tendency and capacity to mislead members of the public to rely thereon and to purchase substantial quantities of Rev-up vitamins.

PAR. 14. The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Levine, Huntley & Schmidt, Inc. is a New York corporation with its office and principal place of business located at Ten E. 53rd St., N.Y., N.Y.

B. 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 respondent Levine, Huntley & Schmidt, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the product Rev-up vitamins or any vitamin and/or mineral product of Commerce Drug Company, Inc. or Del Laboratories, Inc. do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents in writing, orally, visually or in any other manner, directly or by implication, that:

1. The stresses and strains a person undergoes create a condition which will be benefited by consumption of such product;

2. People need such a specially formulated product;
3. Such product is of special benefit to a person or particular group of persons;
4. There is a daily low-energy period in people at any particular time of day, or words of similar import or meaning;
5. Such product will make one feel like a new person, or words of similar import or meaning;

Unless, at the time the statement or representation is made, respondent has a reasonable basis for such representations consisting of competent and reliable evidence.

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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement containing any representation referred to in Paragraph A above which is not supported by the aforesaid reasonable basis.

It is further ordered, That respondent maintain complete business records relative to the manner and form of their compliance with this order, and shall retain each record for three years after such record is made.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its present and future operating divisions, officers, and directors, and to all present and future agents or representatives engaged in the preparation or placement of advertisements.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF
ELKHORN MINING COMPANY T/A FREE ENTERPRISE
URANIUM-RADON MINE, ET AL.

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

Docket C-2721. Complaint, Aug. 5, 1975--Decision, Aug. 5, 1975

Consent order requiring a Boulder, Mont., owner and operator of a uranium mine, among other things to cease misrepresenting the curative or physiological effect of radon gas on disease; and failing to disclose to prospective customers that radon gas has any provable physiological effect on disease, including arthritis, sinusitis, eczema and asthma.

Appearances

For the Commission: *Thomas C. Armitage.*

For the respondents: *John F. Bell, Bolkovatz & Romine, Helena, Mont.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Elkhorn Mining Company, a corporation dba Free Enterprise Uranium-Radon Mine, Radon Research Foundation, a corporation, and John T. Lewis, individually and as an officer of Elkhorn Mining Company (hereinafter respondents), have violated Section 5 of the Federal Trade Commission Act, and that a proceeding would be in the public interest, hereby issues its complaint:

PARAGRAPH 1. Elkhorn Mining Company is a Montana corporation with its office located at Boulder Bank Bldg., Boulder, Mont. It does business under the name Free Enterprise Uranium-Radon Mine.

Radon Research Foundation is a Montana nonprofit corporation with its office located at Boulder Bank Bldg., Boulder, Mont. It had no receipts or disbursements in the past three years. It employed no one to do research. All expenses were paid by the Elkhorn Mining Company or its former president Wade V. Lewis personally. It distributes promotional literature for the Free Enterprise Mine and authors promotional literature distributed by the Elkhorn Mining Company. Its activities therefore inure to the monetary benefit of the Elkhorn Mining Company. It is therefore subject to Federal Trade Commission jurisdiction, 15 U.S.C. §44.

John T. Lewis is an individual and officer of Elkhorn Mining Company. He formulates, directs and controls the policies of said corporation, and his address is the same as that of said corporation.