

## Complaint

## IN THE MATTER OF

## THE J. B. WILLIAMS COMPANY, INC., ET AL.

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

*Docket 8547. Complaint, Dec. 7, 1962—Decision, Sept. 28, 1965*

Order requiring a New York City manufacturer of drug preparations and its advertising agency, to cease misrepresenting the effectiveness of its "Geritol" liquid and tablets by falsely representing in television commercials and newspaper advertising that all cases of tiredness, loss of strength, run-down feeling, nervousness and irritability indicate a deficiency of iron and that the common effective remedy for these symptoms is "Geritol"; and also to affirmatively state that in the great majority of cases of tiredness the symptoms are not caused by such iron or vitamin deficiency.

## 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 The J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, 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 The J. B. Williams Company, 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 400 Park Avenue, in the city of New York, State of New York.

Respondent Parkson Advertising Agency, 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 400 Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent The J. B. Williams Company, Inc., is now, and has been for some time last past, engaged in the sale and distribution of preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent The J. B. Williams Company, Inc., for the said preparations, the formulae thereof and directions for use are as follows:

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1. *Designation:* "Geritol Liquid"*Formula (Per Oz.):*

Thiamine (B <sub>1</sub> ) .....	5 mg.
Riboflavin (B <sub>2</sub> ) .....	5 mg.
Niacinamide .....	100 mg.
Panthenol .....	4 mg.
Pyridoxine (B <sub>6</sub> ) .....	1 mg.
Vitamin B <sub>12</sub> .....	3 mcg.
Methionine .....	100 mg.
Choline Bitartrate .....	100 mg.
Iron (as in iron ammonium citrate) .....	100 mg.

*Directions:* As a high potency tonic (Iron, Thiamine, Riboflavin, Niacin deficiencies): 1 tablespoonful at each meal or as directed by physician. As a dietary supplement: 1 tablespoon daily at breakfast or any mealtime.

2. *Designation:* "Geritol Tablets"*Formula (One Tablet):*

Thiamine (B <sub>1</sub> ) .....	5 mg.
Riboflavin (B <sub>2</sub> ) .....	5 mg.
Vitamin C .....	75 mg.
Niacinamide .....	30 mg.
Calcium Pantothenate .....	2 mg.
Pyridoxine (B <sub>6</sub> ) .....	0.5 mg.
Vitamin B <sub>12</sub> .....	3 mcg.
Inositol .....	20 mg.
Methionine .....	25 mg.
Choline Bitartrate .....	25 mg.
Iron .....	50 mg.
Debittered Brewer's Yeast .....	50 mg.

*Directions:* As a high potency tonic (Thiamine, Riboflavin, Niacin, Vitamin C or Iron deficiencies):

Three (3) tablets daily — one at each mealtime or as directed by a physician.

As a dietary supplement:

One (1) tablet daily at breakfast or any meal of your choice.

PAR. 3. Respondent The J. B. Williams Company, Inc., causes the said preparations, when sold, to be transported from a place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Parkson Advertising Agency, Inc., is now, and for some time last past has been, the advertising agency of The J. B. Williams Company, Inc., and now prepares and places, and for some time last past has prepared and placed, for publication adver-

tising 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, respondent Parkson Advertising Agency, 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 business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the preparations 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 television broadcasts transmitted by 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:

\* \* \* if you *often* have that tired and run-down feeling \* \* \* and if you take vitamins yet still feel wornout, remember \* \* \* your trouble may be due to iron-poor blood. And vitamins *alone* can't build up iron-poor blood. But GERITOL can! (Television)

\* \* \* Here's how to feel stronger fast \* \* \* Especially after a fever, flu, or virus. Have you been feeling tired and rundown more often than usual? Your trouble may be due to iron-poor blood. And this is often especially true after a fever, the flu or virus. During such an illness you may be on a liquid diet or eat light foods. As a result you may continue to feel a lack of strength and energy after your illness, because the essential iron in your blood is reduced and your resistance is low. (Newspaper)

\* \* \* GERITOL begins to strengthen iron-poor blood in twenty-four hours. Check with your doctor. And if you feel rundown because of iron-poor blood \* \* \* especially after a fever, flu or virus \* \* \* take GERITOL every day. You'll

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feel stronger fast \* \* \* in just seven days \* \* \* or your money back from the GERITOL folks. (Television)

\* \* \* \* \*

In only one day GERITOL-iron is in your bloodstream carrying strength and energy to every part of your body. (Television)

\* \* \* \* \*

GERITOL \* \* \* the high-potency, vitamin iron-rich tonic to help you FEEL STRONGER! (Television)

\* \* \* \* \*

\* \* \* have you been suffering from the flu, a cold or sore throat? (Television)

\* \* \* \* \*

PROVED BY MEDICAL TESTS!

Patients diagnosed with iron-deficiency anemia frequently were pale, nervous, irritable and easily tired. After patients took GERITOL daily, doctors reported definite clinical improvement—further confirmed by laboratory tests. Remember, ordinary maintenance vitamins can't do it! But the high-potency combination of vitamins plus iron in GERITOL can help you regain your strength and energy. (Newspaper)

\* \* \* \* \*

Vitamins alone can't build up iron-poor blood. But GERITOL can! Because GERITOL contains 7 important vitamins and, in addition, supplies the therapeutic amount of iron needed to build iron-rich red blood. Just 2 GERITOL tablets, or 2 tablespoons of GERITOL liquid, contain twice the iron in a pound of calves' liver! It is this rich source of iron, combined with high-potency vitamins, including essential B vitamins in 3 to 5 times the minimum daily requirements, that make GERITOL such an effective strength-building tonic. (Newspaper)

\* \* \* \* \*

I know you'll feel stronger fast \* \* \* in just 7 days \* \* \* or your money back! (Television)

\* \* \* \* \*

PAR. 6. Through the use of the statements in the aforesaid 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 Geritol Liquid and Geritol Tablets will be of benefit, safe and effective in the treatment and relief of an established or existing deficiency of iron and iron deficiency anemia, and tiredness, loss of strength, run-down feeling, nervousness and irritability.

2. That Geritol Liquid and Geritol Tablets, and each of them, will increase the strength and energy of every part of the body within 24 hours.

3. That Geritol Liquid and Geritol Tablets, and each of them, will promote convalescence from a cold, flu, fever, virus infection, sore throat and other winter illnesses.

4. That the vitamins contained in both Geritol Liquid and Geritol Tablets contribute to the effectiveness of these preparations in the treatment or relief of an established or existing deficiency of iron or iron deficiency anemia.

5. That the purchase price of Geritol Liquid and Geritol Tablets will be refunded unconditionally if the purchaser is not satisfied with the product.

PAR. 7. In truth and in fact:

1. Neither Geritol Liquid nor Geritol Tablets will be of benefit in the treatment of tiredness, loss of strength, run-down feeling, nervousness or irritability except in a small minority of persons whose tiredness, loss of strength, run-down feeling, nervousness or irritability is due to an established or existing deficiency of one or more of the vitamins provided by these preparations or to an established or existing 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 tiredness, loss of strength, run-down feeling, nervousness or irritability 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 an established or existing deficiency of iron or who have iron deficiency anemia the preparations can be used safely and effectively in the treatment and relief of an established or existing 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 tiredness, loss of strength, run-down feeling, nervousness or irritability, these symptoms are not caused by an established or existing deficiency of one or more of the vitamins provided by Geritol Liquid or Geritol Tablets or by an established or existing 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 effec-

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tive in the treatment and relief of an established or existing deficiency of iron or of iron deficiency anemia, in adults, and when ascribing symptoms of tiredness, loss of strength, run-down feeling, nervousness or irritability, in adults, to an established or existing 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, an established or existing 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 and symptoms and thereby permit the progression of such disease or disorder.

2. Neither Geritol Liquid nor Geritol Tablets will increase the strength or energy of any part of the body within 24 hours.

3. Neither Geritol Liquid nor Geritol Tablets will be of benefit in promoting convalescence from a cold, flu, fever, virus infection, sore throat or other winter illnesses.

4. The vitamins supplied in neither Geritol Liquid nor Geritol Tablets are of any benefit in the treatment or relief of an established or existing deficiency of iron or iron deficiency anemia.

5. The purchase price of Geritol Liquid or Geritol Tablets is not refunded unconditionally, but there are terms and conditions which must be complied with by a purchaser in order for him to secure a refund, which terms and conditions are not disclosed in the advertising.

The aforesaid advertisements set forth and referred to in Paragraph Five above were, and are, misleading in material respects and 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.

*Mr. Bruce J. Brennan and Mr. Daniel J. Manelli for the Commission.*

*Mr. H. Thomas Austern, Mrs. James H. McGlothlin, Mr. George Blow, and Mr. Gerry Levenberg, attorneys for respondents, Covington & Burling, Union Trust Building, Wash. 5, D.C.*

## INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

MAY 8, 1964

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## SUPPORTING REFERENCES

"Tr." refers to the official transcript.

CX refers to Commission Exhibits.

RX refers to Respondents' Exhibits.

The references are placed at the end of each paragraph in the order in which the particular statements which they support are made in the paragraph.

## I. The Complaint

1. On December 18, 1962, the Federal Trade Commission issued the complaint upon which this proceeding is based charging The J. B. Williams Company, Inc., a corporation, hereinafter referred to as Williams, and Parkson Advertising Agency, Inc., hereinafter referred to as Parkson, with the dissemination of false and misleading advertising of two drug preparations called Geritol Liquid and Geritol Tablets.

2. Respondent Williams is, and has been for a number of years, engaged in the interstate sale and distribution of the two drug preparations named above; and respondent Parkson is, and has been for some time, the advertising agency for Williams and is engaged in the preparation and dissemination of advertisements to promote the sale of Geritol Liquid and Geritol Tablets. Respond-



ents' advertisements are disseminated by the United States mails and through various means in commerce including newspaper advertising and television broadcasts.

3. The complaint sets forth brief portions of various advertisements of Geritol Liquid and Geritol Tablets which are alleged to be typical of the advertisements of those products. The alleged misrepresentations which are charged as having appeared in respondents' advertisements are alleged to have been disseminated in violation of Sections 5 and 12 of the Federal Trade Commission Act (complaint, answer).

## II. The Answer

4. A joint answer to the complaint was submitted by the respondents on January 16, 1963. Respondents' answer makes certain admissions concerning the business of the respondents, but denies the dissemination of any false advertisements and denies any violation of the Federal Trade Commission Act.

## III. Prehearing Conferences and Hearings

5. Prehearing conferences were held on February 20 and March 1, 1963, at which various agreements and statements were made interpreting or modifying the language used in the complaint which were thereafter incorporated in the hearing examiner's prehearing order.

6. Hearings in support of the case-in-chief were held in New York, New Orleans, Boston, Washington, and St. Louis during the period from March 12 through May 6, 1963. Counsel supporting the complaint called nine witnesses, seven of whom were medical doctors.

7. Hearings on behalf of the respondents were held in Washington, New York, New Orleans, Boston, Philadelphia, Baltimore, Atlanta, Portland, San Francisco, and Los Angeles during the period June 3 through October 29, 1963. Respondents called 43 witnesses, of whom 35 were presented as experts in the field of medicine or nutrition.

8. Hearings in rebuttal of respondents' defense were held in Washington, Cincinnati, and Boston during the period of December 3 through December 16, 1963. Counsel supporting the complaint presented four rebuttal witnesses, all of whom were medical doctors.

## IV. Proposed Findings

9. Opposiing counsel submitted proposed findings as to the facts, proposed conclusions and a proposed order. In addition, they

submitted replies to the opposition's proposals. All proposals have been considered by the hearing examiner, and those not incorporated in this initial decision, either verbatim or in substance, are hereby rejected.

#### V. The Respondents and The Products

10. Williams is a New York corporation with its principal place of business at 711 Fifth Avenue, New York, New York.

11. Parkson is also a New York corporation with its principal place of business located at 400 Park Avenue, New York, New York.

12. Williams is now and has been for some time engaged in the sale and distribution of two preparations known as Geritol Liquid and Geritol Tablets. The formula of those preparations and the directions for their use, which appear on the labels affixed to the containers, are as follows:

1. *Designation:* "Geritol Liquid"

*Formula (Per Oz.):*

Thiamine (B <sub>1</sub> ) .....	5 mg.
Riboflavin (B <sub>2</sub> ) .....	5 mg.
Niacinamide .....	100 mg.
Panthenol .....	4 mg.
Pyridoxine (B <sub>6</sub> ) .....	1 mg.
Vitamin B <sub>12</sub> .....	3 mcg.
Methionine .....	100 mg.
Choline Bitartrate .....	100 mg.
Iron (as in iron ammonium citrate) .....	100 mg.
Plus other Vitamin B Complex factors as found in yeast extract.	

*Directions:* As a high potency tonic (Iron, Thiamine, Riboflavin, Niacin deficiencies): 1 tablespoonful at each meal or as directed by physician. As a dietary supplement: 1 tablespoonful daily at breakfast or any mealtime.

2. *Designation:* "Geritol Tablets"

*Formula (One Tablet):*

Thiamine (B <sub>1</sub> ) .....	5 mg.
Riboflavin (B <sub>2</sub> ) .....	5 mg.
Vitamin C .....	75 mg.
Niacinamide .....	30 mg.
Calcium Pantothenate .....	2 mg.
Pyridoxine (B <sub>6</sub> ) .....	0.5 mg.
Vitamin B <sub>12</sub> .....	3 mcg.
Inositol .....	20 mg.
Methionine .....	25 mg.
Choline Bitartrate .....	25 mg.
Iron as in Ferrous Sulfate .....	50 mg.
Debittered Brewer's Yeast .....	50 mg.

*Directions:* As a high potency tonic (Thiamine, Riboflavin, Niacin, Vitamin C or iron deficiencies): Three (3) tablets daily—one at each mealtime or as directed by a physician. As a dietary supplement: One (1) tablet daily at breakfast.

(CX 13, 14, 15; Respondents Answer, par. 2, Exhibits A and B)

13. Parkson is the advertising agency for Williams. The evidence shows that the advertising done on behalf of Williams is a substantial volume and the advertising for Geritol alone amounted in 1962 to approximately \$3,500,000. About 95% of Parkson's total business is for Williams; and in addition, it does some advertising for Liggett's Drug Company. All of the stock of Parkson is owned by the stockholders of Williams, but neither Parkson nor Williams is a subsidiary of the other. The record contains no further evidence concerning Parkson's competitive activities and we are therefore constrained to conclude that there is no substantial evidence that Parkson is in substantial competition in commerce with other corporations, firms, or individuals similarly engaged in the advertising business.

#### VI. Issues as to the Content and Meaning of Respondents' Advertisements

14. Since the complaint is predicated upon the allegations that certain of respondents' advertisements are misleading in a material respect, and since respondents have challenged the interpretation placed upon certain of those advertisements, the content and meaning of those advertisements are critical issues which we must resolve. In this connection respondents have also asserted and Mr. Edward Kletter, president of Parkson, has testified that certain of Williams advertisements of Geritol were not typical advertisements because they had been abandoned and that certain other television advertisements were not typical because they were 30-second length television advertisements and 30-second length commercial advertisements were no longer in use. The abandonment of advertisements is, of course, no defense to a charge that it is false. (*Henry Spencer Gift, Inc. v. F.T.C.*, 302 F. 2d 267 (1962)). Furthermore, since the abandoned advertisements are similar to and of the same general type as other of respondents' advertisements, we think that they may be properly called "Typical." We think further, however, that fairness to the respondents requires that the entire advertisement, as near as possible, as it was read, seen, or heard, be considered in order to determine what representations were actually made. Accordingly, we quote in full a number of respondents' advertisements as follow:

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## VIDEO

MS OF BERT PARKS. GERITOL  
DESK UNIT NOT IN VIEW.

FILM CLIP #SF-3 :14  
(WINTER SCENE)  
(USE ONLY :10)

CUT BACK TO BERT PARKS.

DOLLY BACK TO REVEAL  
UNIT.

PICKS UP BOTTLE OF GERITOL  
TABLETS.

DOLLY IN TO LOSE UNIT

HOLDS UP BOTTLE OF GERI-  
TOL LIQUID

DISSOLVE BOTT SUPER: CARD  
#G-548R3 "7 VITAMINS +"  
(PULL +)

UNDERCUT BOTT SUPER:  
CARD #G-164R3  
"TWICE THE IRON IN A  
POUND OF CALVES' LIVER"

LOSE SUPER.

CUT TO CARD #G-574R  
DISPLAY OF PRODUCT WITH  
MESSAGE "FEEL STRONGER  
FAST"

## AUDIO

*BERT PARKS:* Well now, has the  
weather been like this in your part  
of the country? Snowy \* \* \* blus-  
tery \* \* \* cold?

*SOUND: WIND HOWLING:*

As a result, have you been in bed  
with a cold, flu, fever? After such an  
illness, if you suffer from iron-poor  
blood you may find that  
recovery is slow. To get back your  
normal strength fast, when this is  
your problem, you should build up  
iron-poor blood. Now, if you've been  
taking vitamins and still feel tired—  
remember, vitamins *alone* can't build  
up iron-poor blood.

But GERITOL *can!* Because

just 2 GERITOL tablets \* \* \*

or 2 tablespoons of GERITOL liquid  
\* \* \*

contain 7 vitamins \* \* \* PLUS \* \* \*

*twice* the iron in a pound of calves'  
liver.

GERITOL begins to strengthen iron-  
poor blood in twenty-four hours.  
Check with your doctor. And if you  
feel rundown because of iron-poor  
blood \* \* \* especially after a fever,  
flu or virus \* \* \* take GERITOL  
every day.

You'll *feel stronger fast* \* \* \* in  
just seven days \* \* \* or your money  
back from the GERITOL folks.

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## VIDEO

MS OF ART LINKLETTER IN  
COMMERCIAL AREA.

HOLDS UP BOTTLE OF GERI-  
TOL TABLETS AND

PICKS UP BOTTLE OF GERITOL  
LIQUID. POINTS TO IT.

DISSOLVE BOTTOM SUPER:  
CARD #G-548R3 "7 VITAMINS  
+" (PULL +)

UNDERCUT BOTTOM SUPER:  
CARD #G-164R3 "TWICE THE  
IRON IN A POUND OF CALVES'  
LIVER"

LOSE SUPER

TCU OF LINKLETTER. GES-  
TURES WITH BOTTLES. CLOSE  
AS POSSIBLE

BOTTOM SUPER: CARD #G-283  
"FEEL STRONGER FAST"

UNDERCUT BOTTOM SUPER  
#SP-201 "SAVE \$1.00 BUY ECON-  
OMY SIZE"

## AUDIO

*ART LINKLETTER:* The other day  
I heard a lady say, "I feel so tired  
every night, a team of horses couldn't  
drag me out!" If you feel too tired  
ever to go out and have a little fun  
\* \* \* that worn-out feeling may be  
due to iron-poor blood. And if you've  
been taking vitamins, yet *still* feel  
tired, remember *vitamins alone* can't  
build up iron-poor blood. But GERI-  
TOL can! Because \* \* \*

just 2 GERITOL tablets \* \* \*

or 2 tablespoons of GERITOL liquid  
\* \* \*

contain 7 vitamins \* \* \* *plus*

*twice* the iron in a pound of calves'  
liver.

In only one day GERITOL-iron is  
in your bloodstream carrying *strength*  
and *energy* to every part of your body.  
Check with your doctor \* \* \* and if  
you've been feeling worn-out because  
of iron-poor blood \* \* \* and especially  
after a cold, the flu or sore throat

\* \* \* take GERITOL *every day*.

*Feel stronger fast* \* \* \* in just 7 days  
or your money back from the GERI-  
TOL folks. And to save one dollar  
\* \* \* buy the economy size.

## VIDEO

ECU OF TED MACK BEHIND  
DESK. NO UNIT IN VIEW

FILM CLIP OF WINTER SCENE

## AUDIO

*TED MACK:* Well now, has the  
weather been like this in your part  
of the country?  
Snowy, blustery, cold?

*SOUND: WIND HOWLING*

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## VIDEO

## AUDIO

CUT BACK TO MACK	As a result, have you been suffering from the flu, a cold or sore throat?
DOLLY BACK TO REVEAL UNIT	Remember, the combination of a winter illness and iron-poor blood can drag you down. And I'd like to point out, if you've been taking vitamins and <i>still</i>
DOLLY IN TO LOSE UNIT	feel tired, remember * * * <i>vitamins alone</i> can't build-up iron-poor blood * * *
HOLD UP BOTTLE OF GERITOL TABLETS	But GERITOL <i>can!</i> Because just 2 GERITOL tablets * * *
PICKS UP BOTTLE OF GERITOL LIQUID IN RIGHT HAND. POINTS TO IT	or 2 tablespoons of GERITOL liquid * * *
DISSOLVE BOTTOM SUPER: CARD #8-548R3 "7 VITAMINS +" (PULL +)	contain 7 vitamins * * * <i>plus</i> * * *
UNDERCUT BOTTOM SUPER: CARD #G-164R3 "TWICE THE IRON IN A POUND OF CALVES' LIVER"	<i>twice</i> the iron in a pound of calves' liver.
LOSE SUPER	In only <i>one</i> day GERITOL-iron is in your bloodstream carrying <i>strength</i> and <i>energy</i> to <i>every</i> part of your body. Check with your doctor. And if you've been feeling wornout because of iron-poor blood * * *
CUT TO PRODUCT DISPLAY	take GERITOL <i>every</i> day.
BOTTOM PULL REVEALS #G-131 "FEEL STRONGER FAST"	You'll <i>feel stronger fast</i> * * * in just 7 days * * * or your money back from the GERITOL folks.

15. The issues as to the alleged content and meaning of the above advertisements may be stated in six questions, as follows:

1. Do respondents' advertisements represent directly and by implication that Geritol Liquid and Geritol Tablets will be of benefit, safe and effective in the treatment and relief of a deficiency of iron or iron deficiency anemia and tiredness, loss of strength, run-down feeling, nervousness and irritability?

2. Do respondent's advertisements have the capacity and tendency to suggest, and do they suggest, to persons of both sexes and

all ages who experience tiredness, loss of strength, run-down feeling, nervousness or irritability that there is a reasonable probability that those symptoms will respond to the taking of Geritol?

3. Do respondents' advertisements represent that Geritol will increase the strength and energy of every part of the body within 24 hours?

4. Do the respondents' advertisements represent that Geritol Liquid or Tablets will promote convalescence from a cold, flu, fever, virus infection, sore throat and other winter illnesses?

5. Do respondents' advertisements represent that the vitamins contained in Geritol contribute to the efficiency of those preparations in the treatment or relief of a deficiency of iron or iron deficiency anemia?

6. Do respondents' advertisements represent that the purchase price of Geritol will be refunded unconditionally if the purchaser is not satisfied with the product?

That the respondents' advertisements represent the Geritol products are safe and effective in the treatment of iron deficiency and iron deficiency anemia and the symptoms of tiredness, loss of strength, run-down feeling, nervousness or irritability which may accompany such deficiency is unquestioned. As to the other alleged meanings of respondents' advertisements, we do not find the same agreement.

16. A study of respondents' advertisements lead to the conclusion that they are addressed to all persons regardless of age or sex who may be suffering from tiredness, loss of strength, run-down feeling, nervousness, or irritability when such symptoms are due to a deficiency of the vitamins in Geritol or to a deficiency of iron. It is true as respondents point out that the various advertisements admonish the consumer who reads, listens, or views the advertisements to "check with your doctor" in order to determine whether the potential consumer is suffering from "iron poor blood," with the further admonition that if the consumer is suffering from such a deficiency to take Geritol.

17. Respondents' advertisements must be viewed not as a grammarian might parse a sentence, but with a view to the practical realities of life and the probable impression which such advertisements may be reasonably expected to convey to those seeing, reading, or hearing them. Respondents' counsel tells us that "Geritol's advertising is aimed primarily at women during the child-bearing years who have a deficiency of iron," but the advertisements do not so state.

18. What is the significance of the admonition in the advertisements, "check with your doctor"? Do the respondents really expect the consumers to check with their doctors? There is no evidence in the record to answer that question directly. There is evidence, however, which warrants certain conclusions concerning that admonition.

19. Respondents' advertising director, Mr. Kletter, testified that 90% of respondents' budget is used for television advertising and the remaining 10% for newspaper advertising. The record is silent as to what may or may not have been expended by the respondents to advertise Geritol to the medical profession. But the interference is warranted that, during the period under consideration, nothing was spent on that type of advertising. If respondents really expected consumers to consult their physicians in response to respondents' advertisements, it would seem reasonable that respondents would have devoted some of their advertising budget to convince the medical profession of the merits of Geritol.

20. We believe that the consumer upon hearing, viewing, or reading respondents' advertisements may reasonably be expected to conclude that his tiredness and run-down feeling will respond to the taking of Geritol, and that he may reasonably conclude that his symptoms are the result of iron deficiency or vitamin deficiency, or both. He may further reasonably be expected to conclude that the heeding of the suggestion "check with your doctor" is unnecessary because there is a clear implication in the advertisement that the symptoms enumerated may well be those of iron deficiency. If he indeed has iron deficiency, he has been told in respondents' advertisement that he can correct that condition by the taking of Geritol. The consumer need merely buy Geritol and wait for the promised improvement in his symptoms. He has been told that his strength and energy will increase in 24 hours; and further, that if he does not feel better at the end of the seven days, he may have his money back from the Geritol "folks." From the evidence it is reasonable to expect that the placebo effect of such medication, as in the case of other medication, may cause many people at least to believe that their symptoms are relieved and that their health is actually better.

21. The respondents' television advertising does not show people checking with their doctors. To the contrary, it depicts tired people and people who have recovered their strength from taking Geritol. Consider for example the woman depicted in the Commission's Exhibit 9A and B. As the announcer is stating, "in only one day Geritol is in your blood stream carrying strength and



energy to every part of your body," the woman in question is transformed into an energetic, vibrant, happy individual.

22. For the reasons stated, we conclude that respondents' advertisements represent that there is a reasonable probability that the symptoms described in those advertisements will respond to treatment by the use of Geritol.

23. The statement in respondents' advertisements that "in only one day Geritol-iron is in the blood stream carrying strength and energy to every part of your body" clearly represents that the person using Geritol will experience an increase in strength and energy in 24 hours. Such representation holds out the promise of much more in the way of strength and increased energy than a mere microscopic change in an individual's blood.

24. There is a statement in respondents' television advertisement, following the sound of heavy wind, that:

As a result, have you been in bed with a cold, flu, fever; after such an illness, if you suffer from iron-poor blood, you may find that recovery is slow.

Such statement indicates that there is a reasonable probability that Geritol will promote convalescence from a cold, flu, fever, virus infection, sore throat or other winter illnesses. The further statement in respondents' advertisements that, "\* \* \* Remember, vitamins alone can't build up iron-poor blood" implies that there is a cooperative action between the vitamin content of Geritol and the iron content thereof; and that the advertisement represents that the vitamins in Geritol aid the iron in that preparation in the building up of iron-poor blood.

25. The statement "feel stronger fast \* \* \* in just seven days or your money back from the Geritol folks" clearly implies an unconditional guarantee.

26. We conclude that the interpretation placed upon the respondents' advertisements in the complaint are warranted by the exhibits in evidence and by a logical interpretation of those exhibits.

27. We have considered the testimony of the three witnesses presented by the respondents as communications specialists and their interpretations of respondents' advertisements and to the extent that their testimony is inconsistent with the above conclusions, their opinion testimony is deemed to be unrealistic and in error (Maynard, Tr. 2839-59; Berlo, Tr. 3652; Smith, Tr. 4061-77).

## VII. Statements in Respondents' Advertisements

## Alleged to be False

28. Based upon the alleged content and meaning of the respondents' advertisements, which we have found in the preceding section of this opinion to be warranted, the complaint charges that such advertisements are false and misleading in a material respect and that in truth and in fact:

1. Neither Geritol Liquid nor Geritol Tablets will be of benefit in the treatment of tiredness, loss of strength, run-down feeling, nervousness or irritability except in a small minority of persons whose tiredness, loss of strength, run-down feeling, nervousness or irritability is due to an established or existing deficiency of one or more of the vitamins provided by these preparations or to an established or existing deficiency of iron or to iron deficiency anemia.

2. 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 tiredness, loss of strength, run-down feeling, nervousness or irritability, these symptoms are not caused by an established or existing deficiency of one or more of the vitamins provided by Geritol Liquid or Geritol Tablets or by an established or existing deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit; \* \* \*.

3. \* \* \* They are additionally misleading in a material respect because they fail to reveal the material fact, when representing that the preparations will be effective in the treatment and relief of an established or existing deficiency of iron or of iron deficiency anemia, in adults, and when ascribing symptoms of tiredness, loss of strength, run-down feeling, nervousness or irritability, in adults, to an established or existing 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, an established or existing 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 preparation may mask the signs and symptoms and thereby permit the progression of such disease or disorder.

4. Neither Geritol Liquid nor Geritol Tablets will increase the strength or energy of any part of the body within 24 hours.

5. Neither Geritol Liquid nor Geritol Tablets will be of benefit in promoting convalescence from a cold, flu, fever, virus infection, sore throat or other winter illnesses.

6. The vitamins supplied in neither Geritol Liquid nor Geritol Tablets are of any benefit in the treatment or relief of an established or existing deficiency of iron or iron deficiency anemia.

7. The purchase price of Geritol Liquid or Geritol Tablets is not refunded unconditionally, but there are terms and conditions which must be complied

with by a purchaser in order for him to secure a refund, which terms and conditions are not disclosed in the advertising.

#### VIII. Terms Used in Complaint Defined

29. A number of terms used in the complaint were defined by counsel supporting the complaint at the prehearing conference held herein and thereafter formalized in a prehearing order issued by the hearing examiner dated March 4, 1963.

30. "The term anemia, as it is used in the complaint and generally used in clinical medicine, refers to a reduction below normal in the number of red corpuscles per cubic millimeter, the quantity of hemoglobin, and/or the volume of packed red cells per 100 ml. of blood. Iron deficiency anemia as that term is used in this complaint is anemia due to a deficiency of iron of such degree that hemoglobin production is impaired."

31. "The word 'established' as used in the complaint to describe a deficiency of iron, of vitamins, and iron deficiency anemia means 'existing' and there is no intention of implying from the use of the word 'established' that such a deficiency has been scientifically proven to exist."

32. "The words 'great majority' as used in the complaint mean substantially greater than 50 percent and the words 'the small minority' mean that portion or number which is between the great majority and 100 percent."

33. "The usual child-bearing years of a woman are approximately 18 to 35."

34. "'Men of all ages', as those words are used in the complaint mean males 21 years of age and over."

35. "The words 'almost invariably' as used in Paragraph Seven of the complaint are synonymous with 'always'."

36. "The words 'signs and symptoms' referred to in Paragraph Seven (1) on page 485 of the complaint mean those signs and symptoms of the anemia which have been caused by a serious disease or disorder."

#### IX. Scientific Witnesses

37. The scientific and medical problems which are hereinafter discussed in this opinion are based upon the testimony and scientific literature of a distinguished group of medical doctors and experts in the field of nutrition. The testimony of each witness has been considered although the testimony of each may not be cited in support of a particular statement. Counsel supporting the complaint presented 11 medical doctors and the respondents

presented 28. All of the witnesses were recognized and received as experts in their particular field of endeavor. Although differences of opinion were expressed about various problems, some of which reflected deep convictions, the testimony of the witnesses as a group was characterized by commendable frankness and objectivity. A full discussion of the qualifications and accomplishments of each witness would unduly lengthen this opinion. Accordingly, we include herein, in an appendix, a brief introduction to each of the witnesses. A fuller discussion may be found in the record and in the proposed findings as to the facts of counsel.

#### X. Iron and The Human Body

38. A knowledge of the amounts and the functions of iron in the human body and how it is accumulated and how it is lost is essential to an understanding of the issues of this case and the medical testimony concerning them.

##### A. Sources of iron

39. The human body does not synthesize iron and accordingly, all iron in the human body must come from outside sources. "Iron requirements, fortunately, are minimized because iron is avidly conserved and reutilized." (Dr. Carl Moore, CX 43, p. 327). The supply of iron for the body only becomes of critical importance during the growth of the young, because of bleeding, pregnancy, and lactation. The initial supply in the new-born infant comes from the mother's body and amounts to 245 to 500 milligrams in the average infant. The adult body will have an average of 2.6 grams of iron for a very small woman, to six grams of iron for a large adult male (Moore, Tr. 1389; Wallerstein, Tr. 1602; Crosby, Tr. 5077-78, and others).

40. The increase of the amount of iron in the body from infancy to maturity normally is supplied by food. It is interesting to observe that when a person's body supply of iron is depleted by iron loss in excess of iron intake, the rate of iron absorption will increase from some stage of iron depletion. Concerning this phenomenon, Dr. Carl Moore has stated:

The spread of values is so broad and the number of variables so great that it is still difficult to make a precise estimate of the absorption of food iron. One can say with reasonable assurance, however, that normal subjects retain 5 to 10 per cent, iron-deficient subjects, 10 to 20 per cent of the iron in food. From an average adult diet in this country, providing 12 to 15 mg. of food iron, normal subjects should absorb 0.6 to 1.5 mg.; iron-deficient patients should retain 2 to 3 mg.

(Carl v. Moore, *Iron and the Essential Trace Elements*, CX50, p. 241.)

41. The daily amount of iron in the average American adult diet has been variously estimated at from four to 15 mg., seven to 12 mg., 10 to 15 mg., 12 to 15 mg. (Dameshek, RX 43, p. 738, RX 213, p. 25; Crosby, Tr. 5086-87; see Carl Moore, RX 48, p. 138). Additional iron over that supplied in food can be furnished the body orally, as iron salts, by injection, or transfusion of whole blood. Of these methods, the taking of iron salts orally is the most common method employed (McHardy, Tr. 1669; Wallerstein, Tr. 1668-69; Goodman and Gilman, RX 49, p. 1465).

B. The amount and location of iron in the body

42. Every tissue in the body contains some iron. The amount normally in the body and in the various tissues is important for the determination of when there is iron deficiency, and when there is iron deficiency anemia. Every red blood cell contains some iron as part of hemoglobin (the red substance in the cell). The muscle tissues contain iron as a part of myoglobin (the red substance in muscle tissue). Stores of iron, not currently employed in metabolism, are located chiefly in the bone marrow, liver and spleen, but are present in lesser amounts in many other organs. Amounts measured in micrograms are present in the plasma (the fluid part of the blood) and in certain of the enzymes (Beulter, RX 60, pp. 20-31; Wallerstein, Tr. 1602; Dameshek, Tr. 709; Krevans, Tr. 872-73; C. Moore, CX 43, p. 319, CX 50, p. 236).

43. A 70-kilogram man with hemoglobin level of 16 gm. per 100 cc. would probably have four to six gm. total iron in his body. The actual amount is very difficult to determine. Roughly speaking, 2½ gm. would be in red blood cells as hemoglobin, one gm. in muscle tissue as myoglobin, one to 1.5 gm. in storage, a very small amount in the plasma, and a small amount in enzymes. The normal body iron content of an adult woman is about 3½ gm., of which about one gm. is in stores (Wallerstein, Tr. 1602; Dameshek, Tr. 695; Farquharson, Tr. 1087; Goldsmith, Tr. 402; Krevans, Tr. 872-73; C. Moore, Tr. 1387-89, CX 43, p. 319; Welch, RX 181, p. 374; Crosby, Tr. 5083; Trobaugh, Tr. 3444-45; Holly, Tr. 3859-60).

44. From 50 to 70 percent of all the iron in the normal adult is in the circulating blood as a component of hemoglobin, the red material in the red blood cells. Each gram of hemoglobin contains 0.34 gm. of iron (C. Moore, CX 50, p. 236, RX 79, p. 169; Krevans,

Tr. 872; Trobaugh, Tr. 3446; Welch, RX 181, p. 374; Wallerstein, Tr. 1603-04).

45. The body's incessant manufacture of new blood cells involves constant creation of hemoglobin, of which iron is an essential major constituent. Hemoglobin carries oxygen, which is essential for the functioning of cells, from the lungs to tissues throughout the body, and carries carbon dioxide back from the tissues to the lungs (Wallerstein, Tr. 1631-32; C. Moore, Tr. 1370; RX 79, p. 169, CX 50, p. 236).

46. From 20 to 40 percent of the iron in the body of an iron-replete normal adult is in stores, chiefly in the bone marrow, liver, and spleen, but also in other organs. To produce iron deficiency anemia, loss of iron must first exhaust stores, and then continue until the hemoglobin level drops below normal ranges (C. Moore, Tr. 1387-89; Trobaugh, Tr. 3444-45; Goodman and Gilman, RX 49, pp. 1456-58; Holly, Tr. 3862; Wintrobe, RX 282, pp. 731-32; C. Moore, CX 43, p. 319; Beutler, Tr. 4817; RX 60, pp. 20-25; Finch, Tr. 5202; Crosby, Tr. 5083-84, 5136, 5143, 5147-48; Farquharson, Tr. 1076-79; Adelson, Tr. 1234).

47. From seven to 20 percent of the total body iron in a normal adult is a constituent of myoglobin. As a part of myoglobin, iron serves a vital function in oxygen transport and cellular respiration, and provides a store of essential oxygen for the muscle (Beutler, Tr. 4912-13; C. Moore, CX 50, p. 236; RX 79, p. 169; Beutler, RX 60, pp. 26-27; Goodman and Gilman, RX 49, pp. 1456-58).

48. An enzyme is a chemical substance which facilitates or speeds up chemical reactions in the body without being itself consumed in the reactions. Iron is essential to enzymes in two ways: many contain iron as an integral part; as to others, iron is necessary for the enzymatic reaction even though the enzyme itself does not contain iron (Beutler, Tr. 4913; Wallerstein, Tr. 1775; Beutler, RX 60, pp. 28-31, RX 292, p. 380; RX 295, pp. 205-06; C. Moore, RX 79, p. 169; Dameshek, Tr. 343-44, 709; McCawley, Tr. 4560-61; Rosenthal, Tr. 2985).

#### C. How iron is absorbed

49. When iron is taken by mouth, either as a part of food or in a medicine, it is absorbed directly into the bloodstream through the walls of the stomach and almost any portion of the gastrointestinal tract. Absorption takes place most efficiently through the upper portion of the small bowel (Beutler, RX 60, p. 36; Dameshek, Tr. 708, 740; C. Moore, RX 80, p. 69; Wintrobe, RX 284, p. 350; Crosby, Tr. 5149).

50. Once iron passes through the bowel wall, it enters the bloodstream and is quickly bound chemically to a transport protein. Within one or two hours, the newly absorbed iron has left the plasma, which has delivered some to tissues to supply the iron needs of enzymes and myoglobin, and the larger part to bone marrow and liver. Some small part is probably delivered directly by the plasma to developing infant red blood cells (erythroblasts) (Beutler, RX 60, pp. 48-49; Arrowsmith, Tr. 3198-99; Wallerstein, Tr. 1608; C. Moore, Tr. 1372; CX 45, p. 554; CX 47, pp. 110, 120; Trobaugh, Tr. 3455).

51. Within about seven to 10 days after it is swallowed, 80 to 90 percent of the iron absorbed by an iron-deficient individual from oral iron therapy will have reached its ultimate destination in the body, either in storage iron, red blood cells, myoglobin or enzymes (Beutler, Tr. 4922-23; C. Moore, CX 50, p. 241).

#### D. Utilization and preservation of iron

52. Much the largest fraction of iron in the body is contained in hemoglobin as part of the red blood cells. The average life of red blood cells in a healthy person is 120 days, at the end of which the cell is destroyed by the liver or spleen. This means about 21 mg. of iron a day is needed to manufacture the hemoglobin to replace that in the destroyed cells. The iron in the destroyed cells is not lost, however. It is redelivered to the plasma, which delivers it to the bone marrow for manufacture of new red cells (erythropoiesis), or to other tissues (Wallerstein, Tr. 1609; Beutler, RX 60, pp. 52-54; C. Moore, CX 50, p. 241).

#### E. How iron is lost

53. Although the body does not excrete iron as such, the normal person has a steady daily loss. Relatively minute quantities of iron are contained in the feces, sweat, hair and urine. The total amount leaving the body each day in this way averages about one mg. or less (Wallerstein, Tr. 1615; Farquharson, Tr. 1085; Beutler, RX 60, p. 52; C. Moore, CX 43, p. 328; CX 50, p. 242; RX 48, pp. 133, 135; Goldsmith, Tr. 402).

54. The net loss of iron to a woman from normal childbirth, including both iron supplied the baby and bleeding at delivery, is from 300 mg. to about 550 mg., or an average net loss of about 60 mg. per month of pregnancy. The average requirement for pregnancy is from one mg. to about three mg. of iron absorbed each day (Beutler, RX 60, p. 68; Wallerstein, Tr. 1616; C. Moore, RX 80, p. 97; Goldsmith, Tr. 403).

55. By far the most important normal loss of iron is in blood loss of menses. Normal menses are about 60 to 70 cc. of blood per month, which amounts to an iron loss of an average one mg. per day (about 30 per month). Some women, however, have an average daily loss of iron by menses of more than one mg. a day because of excessive menses, and do not realize they are excessive (Wallerstein, Tr. 1615-16; Beutler, RX 60, p. 67; Goldsmith, Tr. 403; Beutler, Tr. 4948; Krevans, Tr. 893; McGanity, Tr. 924, 1037; C. Moore, RX 79, p. 176).

#### XI. Iron Deficiency Anemia and Iron Deficiency; Diagnosis; Symptoms

56. Since the charges involve both iron deficiency anemia and iron deficiency, the medical meaning of those terms must be understood. Symptoms and signs of each condition, and the stage at which they develop, have an important relation to the charges.

57. The essential sign of anemia, including iron deficiency anemia, is blood which contains less than the normal amount of hemoglobin. These normals differ for males and females and are expressed in terms of ranges. Hemoglobin is measured in terms of grams per 100 ml. of blood. A widely recognized range of normal hemoglobin values is 12 to 16 gm. for adult females and 14 to 18 gm. for adult males. Some authorities believe the lower limit of normal hemoglobin is 12.5 gm. for adult women and 14.5 gm. for adult men. A person is not regarded as having anemia unless the hemoglobin level is below the normal range for the particular individual. Dr. Finch stated the problem thus: "I regard iron deficiency anemia as a significant reduction in hemoglobin below the individual's normal level \* \* \*" (Wintrobe, RX 282, p. 105; Beutler, Tr. 4800-01; RX 297, p. 18; Briggs, Tr. 2287; Dameshek, Tr. 322-23; Ebeling, Tr. 3750; Goldsmith, Tr. 399; McHardy, Tr. 2059; C. Moore, Tr. 1330; Wallerstein, Tr. 1598; Wintrobe, Tr. 4651-52; Finch, Tr. 5205-06; Wintrobe, Tr. 4652-53; Beutler, 4804-05).

58. Iron deficiency anemia, as distinguished from other anemias, is anemia in which the fundamental cause is a lack of sufficient iron for the synthesis of hemoglobin. Because of this lack, the body's mechanism for producing red blood cells cannot make a sufficient amount of cells full of hemoglobin, and the hemoglobin per unit of blood falls to a subnormal level. The deficiency of iron may be due to a deficiency of intake, a deficiency of absorption, an increased loss, or a combination of these (Krevans, Tr. 851,



875; Friedman, Tr. 4214; Leake, Tr. 4627; Dameshek, Tr. 250, 317; Goldsmith, Tr. 395-96; Wallerstein, Tr. 1598).

59. When iron deficiency anemia is severe and of longstanding, the blood is pale (hypochromic) and the cells abnormally small (microcytic) from a lack of sufficient hemoglobin to color and fill them. However, not all iron deficiency anemia is hypochromic and microcytic; when the anemia is mild, no change in color of the blood or cell size can be detected (Arrowsmith, Tr. 3185, 3215; Beutler, RX 295, pp. 203-04; RX 296, p. 313; Goldsmith, Tr. 418-19; C. Moore, CX 43, p. 333; CX 50, p. 246; Holly, RX 213, p. 31; Arrowsmith, Tr. 3215; Beutler, Tr. 4932; RX 291, pp. 61, 78; RX 297, p. 17; Crosby, Tr. 5142-43; Farquharson, Tr. 1080; Finch, Tr. 5204; Holly, RX 213, pp. 17, 31, 40; Wallerstein, Tr. 1674-75; Wintrobe, Tr. 4654-55).

60. When anemia is severe, it can be readily diagnosed as iron deficiency anemia instead of some other anemia primarily by a simple examination of the blood that reveals it is hypochromic and microcytic (Arrowsmith, Tr. 3237; Beutler, Tr. 4809-11, 4934-35; RX 295, p. 203; Wallerstein, Tr. 1621).

61. When the anemia is mild, iron deficiency anemia is much more difficult to diagnose, for all the red cell indices (such as color and size) may fall within normal ranges. The most reliable test, according to many witnesses, is to extract a sample of the bone marrow and examine it to see if there is any iron in it. In iron deficiency anemia the iron stores have been exhausted and there will be no stainable iron in the marrow. However, the marrow test is painful, requires skill, and would not be done by a general practitioner. Other sophisticated tests for differential diagnosis of mild iron deficiency anemia include determination of the amount of serum iron, and measurement of the capacity of the serum to transport iron; in iron deficiency anemia the amount being transported is usually subnormal, but the capacity to transport is high. These refined tests are not always readily available to most practicing physicians (Beutler, Tr. 4856, 4934-35; RX 297, p. 17; RX 296, p. 313; Crosby, Tr. 5142-43; Wallerstein, Tr. 1729-30; Beutler, RX 291, p. 78; RX 297, p. 17; Crosby, Tr. 5161-62; Holly, RX 213, p. 21; Trobaugh, Tr. 3424; Wallerstein, Tr. 1684; Trobaugh, Tr. 3425-41 (description of bone marrow test); RX 185-201 (pictures of instruments and techniques used in bone marrow test); Beutler, Tr. 4809-11; Briggs, Tr. 2280; Dameshek, Tr. 711; Friedman, Tr. 4251-53; Reznikoff, Tr. 2418-20; Rosenthal, Tr. 3425-27; Beutler, RX 295, p. 203; Holly, RX 213, p. 18).

62. Many physicians use the pragmatic approach of prescribing oral iron therapy to make or confirm a diagnosis of iron deficiency anemia, when a patient is found to be anemic and the anemia is suspected of being due to a deficiency of iron. By this trial and error technique, if there is adequate response to the taking of oral iron, the anemia may be diagnosed as iron deficiency anemia without further tests. Dr. Krevans stated:

If the anemia improves, although this is not a hundred percent proof, it strongly suggests that the anemia was due to iron deficiency. (Tr. 853)

(Farquharson, Tr. 1083, 1108-09; Goldsmith, Tr. 4478; Holly, Tr. 3873; RX 213, pp. 31, 39, 40; Beutler, Tr. 4810; Rosenthal, Tr. 2981; Trobaugh, Tr. 3451-52; McGanity, Tr. 1526; Reznikoff, Tr. 2421-22.)

63. Some symptoms common to all anemias are found in iron deficiency anemia, and presumably reflect the lowered level of hemoglobin and the consequent inadequate transport of oxygen throughout the body by the red blood cells. These symptoms are weakness, fatigability, pallor, shortness of breath on exertion (dyspnea), headaches, and a feeling of dead tiredness. Dr. Dameshek, referring to the above list of symptoms, testified that:

There are far more symptoms from nervous tension, nervous neurasthenia and neurosis, or whatever you want to call it, than from iron deficiency. The great majority of people who have this multiplicity of symptoms that you brought out are, in my experience, suffering from nerves. On the other hand, the great majority of people with iron deficiency anemia don't have any symptoms, and this is the rub, because if the iron deficiency anemia is due to a silent cancer, this can go along without symptom for a length of time. (Tr. 279)

(C. Moore, CX 43, p. 334; Dameshek, Tr. 279-80; RX 43, p. 739; Farquharson, Tr. 1125-31; RX 73, p. 197; Goldsmith, Tr. 397-98; Wintrobe, RX 282, p. 740; Halpern, RX 250, p. 10; Holly, RX 213, p. 36; F. Moore, Tr. 5313; Reznikoff, Tr. 2417-18; Welch, Tr. 3351; Wallerstein, Tr. 1713-14)

64. Other symptoms (trophic changes) sometimes found in iron deficiency anemia are peculiar to iron deficiency, and apparently are not related to a severely low hemoglobin level. These are: cracks at the corner of the mouth, smooth sore tongue, difficulty in swallowing, brittle or spoon shaped fingernails, slow nail growth, and a web obstructing the esophagus (Beutler, Tr. 4815-16; RX 60, pp. 30-31, 77-79, 83-84, 118-21; RX 293, pp. 130-33; RX 297, pp. 16-17; Dameshek, Tr. 343-44; Farquharson, Tr. 1140-44; CX 35, pp. 302-03; Krevans, Tr. 863-64).

65. Other symptoms sometimes found in severe, prolonged iron deficiency anemia are: flabby wrinkled skin, tingling of fingers and toes (paresthesias), belching, diarrhea or constipation, early graying of hair, marked loss of weight, swollen feet, dull chest pain, palpable spleen, and low grade fever (Dameshek, Tr. 279-80, 331, 338-44, 728-30; Farquharson, Tr. 1125-31, 1162-64; CX 35, pp. 306-07; Dameshek, RX 4-6).

66. When iron deficiency anemia develops slowly, as from a combination of poor diet and slight blood loss, generalized symptoms such as fatigue and nervousness are usually not of a degree that impels the person to see a doctor until the anemia is severe in terms of hemoglobin level (C. Moore, CX 43, p. 334; Dameshek, Tr. 279; Farquharson, Tr. 1162-64; CX 35, pp. 306, 314; Goldsmith, Tr. 397-98 (at hemoglobin levels of 50 percent: 6 to 7 gm.); McHardy, Tr. 2080; RX 135-L (no symptoms even in severe case); Leake, Tr. 4628 (7 to 8 gm. level); McGanity, Tr. 941 (no symptoms at 3-4 gm.); Reznikoff, Tr. 2472-73; Wallerstein, Tr. 1702 (below 10 gm.); Welch, Tr. 3377-78 (7-8 gm.)).

67. The distinction between iron deficiency anemia and iron deficiency is that in the former the hemoglobin level is below normal due to lack of iron and in iron deficiency the person has a normal hemoglobin level but insufficient body iron. Iron deficiency is the state where the body has sufficient iron to produce adequate hemoglobin for all red cells, but lacks enough iron for stores, for tissues, and perhaps for enzymes. Thus, iron deficiency is a state of the same nature as iron deficiency anemia, but is less severe (Beutler, Tr. 4806-08, 4816-18; Wallerstein, Tr. 1600; C. Moore, Tr. 1325, 1377-78; Crosby, Tr. 5136, 5147-48; Finch, Tr. 5202; Farquharson, Tr. 1076-79).

XII. The Charge that In Only a Small Minority of  
Persons Is Tiredness, Etc. Due to a Deficiency  
of One or More of the Vitamins in Geritol  
or a Deficiency of Iron

68. As previously stated, the complaint forms an issue herein by the allegation that:

Neither Geritol Liquid nor Geritol Tablets will be of benefit in the treatment of tiredness, loss of strength, run-down feeling, nervousness or irritability except in a small minority of persons whose tiredness, loss of strength, run-down feeling, nervousness or irritability is due to an established or existing deficiency of one or more of the vitamins provided by these preparations or to an established or existing deficiency of iron or to iron deficiency anemia.

A. Symptoms due to causes other than vitamin and iron deficiency

69. Counsel agree that if a person has the symptoms of tiredness, loss of strength, run-down feeling, nervousness, or irritability due to causes other than a deficiency of any constituent contained in the Geritol preparations, then in such cases the taking of Geritol will be of no benefit to such persons (Respondents' Reply, p. 18).

70. Despite the agreement above referred to, we call attention to the fact that there is always the likelihood when medicine is administered or taken of a placebo effect. Concerning this possibility, Dr. Dameshek when asked if Geritol could relieve the symptoms of tiredness and so forth when they were due to some cause other than iron deficiency testified as follows:

It might. This might be on the basis of what we call a placebo effect, which means an effect due to psychological effect due to the taking of nonspecific material. It could be simply the taking of a medicine. (Tr. 269)

71. Dr. McGanity testified that he would expect 25 percent of the patients with the symptoms referred to who did not have organic diseases to experience a placebo effect (Tr. 9422). He also testified that Geritol Liquid, because of its alcoholic content, might have the desirable effect of "about a shot of sherry before lunch" (Tr. 942).

72. Respondents' witness Dr. Wintrobe, in his book *Clinical Hematology*, wrote: "No benefit from iron therapy can be expected if iron deficiency is not present." (RX 282, p. 460).

73. Respondents' witness Dr. Beutler, in his book *Clinical Disorders of Iron Metabolism*, wrote:

It can not be stressed too strongly that iron deficiency is the only disorder which responds to iron administration. The administration of iron to patients with pernicious anemia, acute or chronic hemolytic anemia, anemias of chronic renal diseases, the anemia of chronic infection, the anemia of cancer, or any other anemia can do no good, may cause harm and can not be condemned too strongly. (RX 60, Chapter 8)

B. In only a small minority of persons with symptoms of tiredness, etc. are those symptoms due to vitamin or iron deficiency

74. There appears to be a consensus of the medical experts that the symptoms of tiredness, loss of strength, run-down feeling, nervousness or irritability are common manifestations of almost any disease or disorder. Dr. Dameshek testified that about 100 percent of all the patients he had seen over the years exhibited those symptoms. He referred to them as nonspecific symptoms occurring in

almost every disorder known to man. He further testified that of all the men in the United States who exhibit these symptoms of tiredness and so forth, only a very small percentage have been due to iron deficiency anemia (Tr. 268-73).

75. Dr. Adelson testified that the commonest cause of tiredness and nervousness are neurosis and anxiety (Tr. 1265).

76. Dr. Farquharson, in the book *Clinical Nutrition*, edited by Jolliffe, Tisdall & Cannon, wrote:

Iron deficiency anemia is often wrongly diagnosed when symptoms of chronic ill-health and fatigue, the result of overwork, strain and worry, are attributed either to a non-existent anemia or to an anemia too mild to give rise to the presenting symptoms. (p. 316)

The views of Dr. Farquharson, as expressed in the above-titled publication, were reaffirmed on the witness stand (Tr. 1061). Dr. Norman Jolliffe, the co-author of the book cited, developed Geritol. Dr. Farquharson testified further that some people who have iron deficiency anemia may be tired for reasons other than the anemia, and may continue to be tired after the anemia has been corrected.

77. Dr. Carl Moore when asked what percent of the women whom you have seen who are tired, run-down, nervous, or irritable have these symptoms due to iron deficiency anemia, replied:

A minority of them. I can't define percentage any more accurately than that. These symptoms are caused by many factors and usually can be explained on bases other than anemia.

78. Respondents' witness Dr. Fein testified that most of the patients he sees who complain of the symptoms of tiredness, etc. do not have anemia at all, that their complaints are usually due to other factors; whereas most of the other patients in which he finds anemia are those which come in for a routine checkup or some other totally unrelated complaints (Tr. 2598-2600). He states:

It is true that one may see these symptoms but, in my practice and in my experience, at least, these are not the presenting complaints for which the patient comes and an iron-deficiency anemia is discovered. (Tr. 2600)

79. From the testimony and exhibits cited and others that might be cited, we are constrained to conclude that the appearance of the symptoms of tiredness, loss of strength, run-down feeling, nervousness or irritability are not necessarily indicative of vitamin or iron deficiency or of iron deficiency anemia.

80. Concerning the instance of vitamin deficiency in the United States which might be eliminated by the taking of Geritol, Dr. Goldsmith testified that such vitamin deficiency was very common

in the South until about 1940 when it began to decrease markedly and that now such deficiency is extremely rare, amounting to a very small fraction of one percent (Tr. 528). She pointed out that articles published on the subject of vitamin deficiency in the 1940's were no longer valid (Tr. 548-50). On redirect examination, Dr. Goldsmith testified that vitamin deficiency is quite rare even in pregnant women and in children. She stated that although vitamin B complex deficiency is very common in certain parts of the world, it has become uncommon in the United States (p. 616).

81. Dr. Carl Moore testified that less than one percent of the patients he sees have deficiency of the vitamins contained in Geritol. As to the vitamin deficiency of persons suffering with colds, he testified on cross-examination as follows:

Q. And I am sure it is your experience as an internist that persons with colds and that sort of thing tend to eat somewhat less lustily than the well person, is that so?

A. Most of them still manage unless they are very sick to eat an adequate diet.

Q. I take it your answer is yes, but most of them still eat an adequate diet, is that correct?

A. Yes.

Q. To the extent that the diet is inadequate, it would also be inadequate in vitamins, would it not?

A. For that period of time, I think your question is a little unfair though, sir, because it ignores the fact that we all have a pretty fair storehouse of vitamins, people in this country do, at any rate, to tide one very handily over a temporary shortage period.

Q. This is true of all vitamins, doctor?

A. It is true of all the vitamins that I know of.  
(Tr. 1416)

82. Respondents' witness Dr. Wallerstein testified that there was much less vitamin deficiency than there was iron deficiency.

83. Respondents' witness Dr. Halpern testified:

\* \* \* in our own population where there is a great abundance of all foods available, that we don't have even more than the one-third malnutrition that we do have—defining "malnutrition" not as serious nutritional disorders, but as there being an adequate intake compared to needs. (Tr. 4290)

He testified further:

Well, as I stated, since I have a suspicion that quite a larger number of patients have an inadequate intake for their needs, despite the fact that I cannot determine it through my diagnostic examination, and since I feel that many of them probably have inadequate store—and I might mention the B Complex and C vitamins are probably not stored at all; there is probably a one-day or two-day need—increased needs arise for one reason or another.

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When I say "practically all", I mean ninety-nine percent of the patients. I give all patients a vitamin supplement. The other one percent I do not give it to because they tell me that their stomach is irritated by vitamins or probably I would otherwise give it to them, too. (Tr. 4295)

84. Despite Dr. Halpern's belief in the presence of vitamin deficiency in the people of this country, we do not believe that his testimony is a contradiction of the witnesses cited above.

85. Dr. Carl Moore testified as to the instances of iron deficiency anemia as a whole as follows:

One can get a reasonable estimate of the maximum number from this kind of observation. During the Second World War when blood was being collected for blood donations, a group of Red Cross centers did initial hemoglobin estimations on blood donors, and had to reject 12.6 percent of those donors because their hemoglobin values were below 12 or 12.5 gr. I forget which figure they use. \* \* \*

\* \* \* \* \*

We conducted a similar study here in St. Louis which took hemoglobin determinations on 1,110 consecutive women who presented themselves as potential donors for the first time. I looked up those figures just this morning and approximately eight or nine percent of the women had hemoglobin values below 12 grams. It was approximately five percent who had hemoglobin values below 11 grams.

For the men, there were 560 consecutive donors and the number of men who had hemoglobin levels below 12 grams was less than one percent.

Now these represent maximum figures for iron deficiency anemia since quite obviously, other factors could have produced the anemia in these individuals.

(Tr. 1328)

86. The witness emphasized that these figures of 12.6 percent (unsegregated as to age and sex) obtained through reference to blood donation centers; eight or nine percent observed in the women studied; and one percent in the men studied, "had to be maximum values for the incidence of iron deficiency anemia because other kinds of anemia would certainly be interspersed" (Tr. 1329).

87. Dr. Goldsmith testified that of the patients she sees perhaps five to 10 percent have iron deficiency anemia, and that:

This would be considerably more than one would see in the general population because \* \* \* the patients are sent to our group frequently because they have anemia for a diagnosis for the kind of anemia that they have so I see an extra lot of patients with both malnutrition and anemia because of my special interest. (Tr. 375)

88. Dr. Adelson testified that of the patients he sees who are not referred, but are part of his general practice of internal medi-

cine, under one percent, perhaps 0.5 percent, are anemic and about half of his anemic patients have iron deficiency anemia (Tr. 1183).

89. Respondents' witness Dr. Arrowsmith testified that in most of the patients which he sees in his selective practice, where the patients are referred to him, about 50 percent have anemia of some sort and between five and 10 percent of those, or about 2.5 to five percent of the total, have iron deficiency anemia (Tr. 3186).

90. Respondents' witness Dr. Wallerstein testified that he had done a study of the relative incidence of iron deficiency anemia at the San Francisco General Hospital over a five-year period (Tr. 1620). One thousand two hundred and fifty patients were covered by the study. In 800 of these, his group had been called to see the patient because a diagnosis of anemia had been made. Two hundred and six (approximately 16.5 percent) of the 1,250 had iron deficiency. Of those with anemia, 25 percent had iron deficiency anemia. On transcript page 1621 he testified that "only about seven percent" of his hematology patients had iron deficiency anemia. He does point out that most of these are referred patients having been screened first by other physicians, so that he would not see all of the uncomplicated cases of iron deficiency anemia. It seems clear from this testimony, however, that this doctor, by the same token, would not see all those cases wherein iron deficiency was found not to exist.

91. Dr. Dameshek testified that of the entire population of all ages, those who have symptoms due to iron deficiency anemia would be less than one percent (Tr. 281-82). At page 638 of the transcript he further stated that it would be less than one percent in men, but more than one percent in women. He was not asked about overall incidence of iron deficiency anemia, but obviously it would be several times higher than this, since mild iron deficiency anemia is more common than severe iron deficiency anemia; and, most mild iron deficiency anemia does not produce symptoms.

92. Dr. McGanity testified that the incidence of iron deficiency anemia in the United States as a whole would be less than 10 percent for pregnant women, less than five percent for nonpregnant women in the usual child-bearing age, and less than two percent for postmenopausal women (Tr. 929).

### C. Conclusions

93. Although a depletion in the human body of the vitamin and iron contained in Geritol may cause the symptoms of tiredness, and so forth, as stated in the respondents' advertisements, those symptoms are common manifestations of almost any disease or



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disorder. Moreover, iron deficiency and iron deficiency anemia or vitamin deficiency, even when such states exist in the body, do not always cause the symptoms described. Furthermore, only a relatively small minority of persons in the United States have iron and vitamin deficiencies and still fewer have the symptoms of tiredness and so forth due to such deficiencies. Accordingly, the charge set forth above is sustained that:

Neither Geritol Liquid nor Geritol Tablets will be of benefit in the treatment of tiredness, loss of strength, run-down feeling, nervousness or irritability except in a small minority of persons whose tiredness, loss of strength, run-down feeling, nervousness or irritability is due to an established or existing deficiency of one or more of the vitamins provided by these preparations or to an established or existing deficiency of iron or to iron deficiency anemia.

XIII. The Charge that the Advertisements Are Misleading  
Because They Fail To Reveal That the Great  
Majority of Persons of Any Age or Sex Who  
Suffer Tiredness, Etc. Are Not Suffering  
From a Deficiency of the Vitamins Pro-  
vided in Geritol or From a  
Deficiency of Iron

94. The complaint creates another issue herein by the allegation that:

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 tiredness, loss of strength, run-down feeling, nervousness or irritability, these symptoms are not caused by an established or existing deficiency of one or more of the vitamins provided by Geritol Liquid or Geritol Tablets or by an established or existing deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit.

95. In the preceding section, XII, the finding was made that in only a small minority of persons with the symptoms of tiredness and so forth were such symptoms due to a deficiency of anything, including iron and vitamins, contained in the Geritol preparations. It follows, therefore, from that finding that in the great majority of persons who do experience such symptoms as tiredness and so forth that such symptoms are not caused by deficiency of a vitamin or mineral in Geritol. The conclusion also follows that the failure of the respondents, in the light of the affirmative representations

made in their advertisements, to reveal the material facts is misleading in a material respect:

\* \* \* in a great majority of persons, or of any age, sex or other group or class thereof, who experience tiredness, loss of strength, run-down feeling, nervousness or irritability, these symptoms are not caused by an established or existing deficiency of one or more of the vitamins provided by Geritol Liquid or Geritol Tablets, or by an established or existing deficiency of iron or iron deficiency anemia, and that in such persons the said preparation will be of no benefit.

XIV. The Charge that the Advertisements Are Additionally Misleading Because They Fail to Reveal that in Women of Any Age Beyond the Usual Child-Bearing Age, or in Men of All Ages, Iron Deficiency Is "Almost Invariably" Due to Bleeding from Some Serious Disease, and In the Absence of Adequate Treatment of the Underlying Causes of the Bleeding, the Use of Geritol May Mask the Signs and Symptoms of Such Disease and Thereby Permit Its Progress

96. The complaint forms another issue by the allegation that:

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 tiredness, loss of strength, run-down feeling, nervousness or irritability, these symptoms are not caused by an established or existing deficiency of one or more of the vitamins provided by Geritol Liquid or Geritol Tablets or by an established or existing deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit; \* \* \*.

A. In women of any age beyond the usual child-bearing age and men of all ages an iron deficiency is almost invariably due to bleeding

97. Finally, and perhaps most important of all, it is not enough to diagnose the anemia as a hypochromic iron deficiency anemia and treat it successfully with iron. In men and older women particularly, it is necessary to remember that hemorrhage is almost certainly the primary factor. While the nature of the primary disease may be obvious, it sometimes happens that a hypochromic anemia is the first manifestation of an almost symptomless carcinoma or other gastrointestinal lesion. (Farquharson, CX 35)

When one is confronted with a man or a postmenopausal woman who has hypochromic anemia but no detectable blood loss, the chances are over-

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whelming that the patient either bleeds intermittently and does not happen to be doing so during the time of examination, or that he is losing small amounts of blood high in the intestinal tract which are not detectable by routine clinical laboratory methods. The only other possibility is that the diet has been deficient or absorption defective over a very long period of time: five to ten years. (C. Moore, CX 43, p. 331)

98. Dr. Krevans testified that in the United States the most common cause of iron deficiency anemia in adult males is gastrointestinal bleeding (Tr. 793-94, 1557).

99. Dr. Dameshek testified that iron deficiency anemia in a male is, for all practical purposes, synonymous with blood loss (Tr. 256, 253).

100. Respondents' witness Dr. Briggs stated that he always assumes that an anemia is due to bleeding (Tr. 2281).

101. Dr. Goldsmith testified that in men "the most common cause of iron deficiency anemia is blood loss" (Tr. 379).

102. Dr. Adelson stated that the principal causes of iron deficiency anemia in men are gastrointestinal bleeding, ulcer, carcinoma or hiatus hernia (Tr. 1184).

103. Respondents' witness Dr. Wintrobe stated:

My approach to an adult male who is found to have iron deficiency would be that I would consider it very, very probable that he is losing blood somewhere, most probably from the gastrointestinal tract, and if I haven't found the cause in the first examination, I had better go and look again. (Tr. 4696)

104. Respondents' witness Dr. Beutler wrote:

The leading cause in adult males and in postmenopausal females is bleeding from the gastrointestinal tract. (RX 60, p. 69)

Dr. Wintrobe stated:

Whenever iron deficiency is found or suspected, careful inquiry concerning possible causes is important. This is especially true if the cause is not obvious since the development of iron deficiency anemia may be the first sign of an occult malignancy, as already stated. If the patient is a man, except when there has been a gastrectomy section [sic: gastric resection], occult blood loss is almost always due to an ulcerative lesion in the gastro-intestinal tract. (Tr. 4700)

105. Dr. Wintrobe, a witness for respondents, testified that he still holds the opinion stated above (Tr. 4700, 4701-12, 4696). He wrote:

\* \* \* the discovery of iron deficiency anemia in a male patient almost always signifies the presence of an occult source of chronic blood loss, such as peptic ulcer or carcinoma of the ascending colon or stomach. (RX 282, p. 739)

## 106. Respondents' witness Dr. Wallerstein testified:

Once a patient has reached maturity \* \* \* any subsequent iron deficiency is, as far as I am concerned, always due to blood loss. There are the rarest of exceptions. And I think everyone in his practice has a case to which he can point with pride and takes pictures of an individual who was on a very miserable diet for 20 or 30 years—I have such an individual in mind. But these are support cases, perhaps one is permitted to say. The vast majority bleed. And certainly any physician seeing iron deficiency anemia in an adult must make the assumption and never let go from this assumption that this anemia is due to blood loss. (Tr. 1634)

107. In 1950, Dr. Moore wrote in the magazine *Blood* as follows:

According to all available evidence, the human organism has very little ability to rid itself of iron through ordinary excretory channels: its major losses of iron are through hemorrhage and pregnancies. Hence, it follows that once the body has achieved adult size without showing iron deficiency it will not become iron deficient unless it is drained of its iron by repeated pregnancies or chronic hemorrhage. \* \* \* But while an inadequate diet and poor absorption frequently contribute to the pathogenesis of iron deficiency, they do not seem able to precipitate its development unless iron is also lost from the body. No carefully studied patient has ever been shown to provide an exception to these statements. In our own experience we certainly have seen none even though it has sometimes been necessary to continue observations for months in order to detect intermittent bleeding from the genito-urinary or gastrointestinal tracts. (CX 51)

108. As to postmenopausal women, Dr. Adelson testified that the cause of iron deficiency anemia is blood loss. Some of the causes of the bleeding in such women were listed as ulcers, hiatus hernia and carcinoma (Tr. 1185-86).

B. In women of any age beyond the usual child-bearing age and in men of all ages the bleeding giving rise to iron deficiency anemia is almost invariably due to a serious disease or disorder.

109. Counsel supporting the complaint has defined a serious disease as used in the headnote B. as a:

\* \* \* disease or disorder that causes bleeding and which develops or can develop from a less serious to a more serious state, and gave as examples, ulcers and cancer (Tr. 27).

110. Respondents' witness Dr. Wintrobe, under redirect examination by respondents' counsel, testified concerning this question of bleeding from a serious disease as follows:

Q. Doctor, you were asked whether the adult male iron deficiency anemia is almost invariably due to blood loss and, of course, you said yes. Let me ask you this: Is it almost invariably due to blood loss of a progressive disease?

A. The answer depends on what you call "progressive disease".

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Q. I will define it for you. Progressive disease is one which characteristically as a disease progresses from a less serious to a more serious state in the patient.

A. Well, then, I think I would have to say yes, progressive disease. The question in my mind was with regard to peptic ulcer. Now, that can be pretty much the same over many years, improving and getting worse, and improving and getting worse, but I suppose in the course of time the changes in the tissues do become such that it is likely to get worse. The probability is progressive rather than complete healing.

Q. Would you regard hemorrhoids as characteristic of a progressive disease, Doctor?

A. Well, they tend to become more and more nasty and there is more and more blood lost in time.

\* \* \* \* \*

Q. \* \* \* We have no quarrel on this side of the table with your earlier statement that in the adult male it is almost invariably caused by blood loss, but the charge here doesn't say by blood loss, it says by a serious disease or disorder which has been defined as one which characteristically progresses, and that is why I asked the question, and taking the causes that you referred to, I think there is no question, for instance, that a malignancy is characteristically progressive, and that is why I am asking you about these other disorders which we know bleed.

A. I would think that with all of the things we have mentioned, esophageal varices, hiatal hernia, peptic ulceration, carcinoma, the scales tip in the direction of progressive rather than not.

Q. And you would say this is true of any bleeding, I take it?

A. Yes. The disease is likely to progress and become worse. (Tr. 4716, 4717)

111. Respondents' Exhibit 181, a paper by Dr. Welch, a witness for respondents, entitled "Anemia Associated with Disease of the Gastrointestinal Tract" lists 17 causes of chronic blood loss which may cause iron deficiency anemia: peptic ulcer, esophagitis, gastritis, bleeding varices, hiatal hernia, hemorrhoids, carcinoma and other neoplasms, ulcerative colitis, polyps, diverticulitis, regional ileitis, Peuts-Jeghers syndrome (multiple polyposis), multiple hereditary telangiectases and other vascular lesions, Mallory-Weiss syndrome, Meckel's diverticulum, carcinoid, and hookworm.

112. Dr. Dameshek testified:

In my own particular experience, iron deficiency anemia in males turns out to be about 50 percent on the basis of a silent cancer somewhere in the bowel or the gastrointestinal tract, and about 50 percent due to more benign causes, such as bleeding from an ulcer and things of that sort. (Tr. 254-55)

He defined "silent cancer" as one somewhere in the gastrointestinal tract which does not evoke any symptoms of pain or discomfort (Tr. 255).

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113. Respondents' Dr. Reznikoff listed the common causes of iron deficiency anemia in his practice as "ulcers, mostly duodenal; varicies, esophageal varices, most of them secondary to cirrhosis of the liver, excessive menstruation, fibroids, polyps, neoplasms of the gastrointestinal tract, of course" (Tr. 2426).

114. Dr. Krevans testifying as to the causes of iron deficiency anemia in women age 35 to the menopause, said that menstrual irregularities were the most common cause. Other causes would be chronic blood loss (from any source). As to women of the usual child-bearing years, he states that the most common causes were excessive bleeding with the menses, and frequent pregnancies. "[A]lthough again bleeding lesions of the intestinal tract can occur in this age group as well, although they are less common." (Tr. 811, 814).

115. Respondents' Dr. Wintrobe indicated that he considers the underlying causes of iron deficiency anemia in women past the menopause a matter for serious concern (Tr. 4651-52).

116. Dr. Adelson also pointed out that there is no guarantee that a nonprogressive illness is going to stay nonprogressive. He gave as examples, diverticulitis and hiatus hernia (Tr. 1298).

117. Respondents' witness Dr. Briggs was asked the question: "Is cancer, in your view, a serious disease or disorder that normally progresses?" He replied:

All disease is serious to me, but if you're giving priority to certain diseases, then cancer must be at the top of the list in seriousness.

In terms of normal progression?

Cancer normally progresses and is therefore serious.

He testified further as follows:

Iron-deficiency anemia in my practice is due to a group of conditions which have in common the factor of bleeding. There are a few exceptions recorded to the presence of iron-deficiency anemia due to bleeding but, in my practice, I always assume that the patient is—that the anemia is due to bleeding and the causes of bleeding in their order of frequency I would list as follows: First, hemorrhoids; secondly, peptic ulcer, in which I include gastric ulcer and duodenal ulcer; thirdly, hiatus hernia; fourthly, what I would describe as an idiopathic bleeding, which I would define as bleeding from a cause which has not yet been determined.

And then, after that, I would list malignancies of the gastro-intestinal tract or malignancies in general, and benign tumors can be listed with malignant tumors or can be listed separately. (Tr. 2281-82)

118. Dr. Francis Moore testified concerning serious diseases that progress as follows:

\* \* \* in ulcerative colitis you have a classic example of true progression because a small area is involved and after a while, it may be days, weeks or

months, the speed may be, and one may have the entire colon essentially destroyed by the disease.

\* \* \* \* \*

I would like to say as regards diverticulosis that the bleeding often is associated with diverticulosis rather than diverticulitis, that actually diverticulosis as a cause of the chronic slow seepage bleeding as to use Mr. McGlothlin's terms is very rare; whereas it does cause acute exsanguinating, life-endangering hemorrhage; whereas, I don't think either of those two closely linked diseases as being prominent in the causes of anemia in the population as a whole. Other symptoms are more prominent than anemia in the diverticulosis than diverticulitis, though diverticulosis can bleed massively on occasion. (Tr. 5302, 5303)

\* \* \* \* \*

\* \* \* Polyps get bigger, that is the only thing that happens to them. They don't grow smaller, they grow larger and they bleed more. They later may cause intussusception of the bowel and there are some people feel they do become malignant in which case they are in sharp contrast to the gastric ulcer situation we discussed a moment ago because here is a benign lesion which can indeed progress on to become malignant at least in some cases. (Tr. 5305-06)

119. In view of the testimony of the distinguished doctors of medicine cited above, we conclude that " \* \* \* the bleeding giving rise to iron deficiency anemia is almost invariably due to a serious disease or disorder."

C. In the absence of adequate treatment of the underlying cause of bleeding, the use of the Geritol preparations may mask the signs and symptoms thereof and thereby permit the progression of such underlying cause

120. The evidence shows that the Geritol preparations, both in tablet and liquid form, have the ability when taken as directed to relieve the symptoms of iron deficiency anemia (Dr. Wintrobe, Tr. 4679; Adelson, 1208-13; C. Moore, 1345-47).

Respondents' witness Dr. Beutler testified:

I would say that I would consider it probable that if a patient took ferrous sulfate in the dosage present in the Geritol Tablets for a sufficiently long period of time, that they could mask an occult carcinoma \* \* \* I am quite sure that it has happened on the basis of physician-administered iron, and I believe that I alluded yesterday to one case in which there was at least a partial response to physician-administered iron in a patient with a cancer of the colon. (Tr. 48, 78)

Dr. Goldsmith testified that if a patient had been feeling tired and had taken Geritol, and that patient had had an iron deficiency anemia and had taken Geritol for long enough, this anemia could have been alleviated "temporarily," or at least improved:

[A]nd if I did my studies on this patient I might not find the anemia and therefore I might not look for a cause of anemia. (Tr. 390)

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121. It is clear that the Geritol preparations will have no effect on the underlying cause of the bleeding which is causing the anemia (Goldsmith, Tr. 338; McGanity, Tr. 932).

Dr. F. Moore testified:

The danger, however, is that a patient with an ulcerative lesion of the stomach which is bleeding of the seepage type can treat himself either with powders that he buys or things for his anemia, and thus feel well enough so that he doesn't take any additional steps about it and then discovers he actually has an early malignancy. (Tr. 5287)

122. Dr. Wintrobe, a witness for respondents, testified, when asked whether the administration of iron to someone with an iron deficiency anemia actually "covers up" or removes or pushes into the background the indications of the anemia:

If I understand your question, I would answer yes, but let me explain what I mean by "yes".

If a patient has—let us say a patient is a male who has an iron deficiency anemia. The iron deficiency anemia is in most instances due to a leak in the gastrointestinal tract. It is the physician's job, first of all, to demonstrate that leak and to take the appropriate measures to treat that leak, that is, if it is a cancer of the cecum, that should be removed, that is far more important than giving iron because iron—the use of iron in that situation could be harmful in this way if enough iron is given and if the blood loss is sufficiently small, even though repeated over a long time, conceivably at least the iron given could relieve the anemia leaving both the doctor and the patient in ignorance of the existence of, say, that cancer of the bowel and thereby delaying for some time—perhaps for a long enough time to make it impossible to remove it and cure him.

Do you think this happens?

Yes, it certainly does. (Tr. 4707)

Dr. Wintrobe was asked what it was that lead him to believe this masking effect has occurred. He answered:

Well, this would be my reason, that an individual might develop an iron deficiency anemia as a result of some disease of the gastrointestinal tract, say. If he medicated himself and if he took a preparation which contained enough iron and took enough of this, he could correct this anemia, and having corrected this anemia, he would be under the false impression that he is cured instead of his going to a physician, a good physician, and being investigated as to the cause of his anemia and then if it is a cause which is correctable, let's say, by the removal of a carcinoma or whatever the case might be, his life might be saved by that; whereas, the self-medication may have delayed the discovery of the cause to the point even that it would no longer be operable. (Tr. 4721)

123. Dr. Damshek described the process of masking thus:

I think if a certain disease such as cancer has a certain set of symptoms, including anemia due to blood loss, then it is possible to mask such symptoms



by the use of iron. \* \* \* If a person takes iron, the symptoms of the anemia may well be masked, obliterated, pushed into the background, no longer noted by the patient because of the iron. \* \* \* The anemia being due to blood loss, which in turn is due to the cancer may be improved by the use of iron. The cancer meanwhile grows merrily along. (Tr. 290)

124. Dr. Dameshek testified that he has seen many patients over the years who have been treated with either iron as such, or with iron and vitamins, who were later found to have cancer which had gone beyond the operative stage (Tr. 283, 266).

125. In illustration of some of the problems of masking, Dr. Adelson mentioned four cases of women in whom iron deficiency anemia was found to be due to a serious condition and in all of whom the administration of iron did produce improvement of the anemia (Tr. 1186, 1193, 1199, 1245). The latter was a 31 year old woman with carcinoma of the cecum; the other three were post-menopausal women. One had carcinoma of the stomach as the cause of iron deficiency anemia, one had carcinoma of the cecum, and the third had first a rectal polyp, then hiatus hernia, and finally a diagnosis of carcinoma of the ascending colon.

126. Respondents' witness Dr. Beutler was asked whether it is theoretically possible for masking of the symptoms of anemia due to a malignancy to occur with the Geritol preparations. He stated:

I think that it is theoretically possible, even with both preparations. I think it is theoretically less likely, much less likely with the elixir than it is with the tablets. (Tr. 4877)

127. Dr. Briggs testified that iron will mask melena (the dark stools sometimes characteristic of mild bleeding from the stomach or colon), and the patient will not be able to distinguish them. (Tr. 2329).

128. Dr. Krevans testified as to cases illustrating the fact that iron deficiency anemia is a symptom and one must not be content merely with the elimination thereof. With respect to one of these, he stated:

[Y]ou will recall he was given iron, and he got better, his anemia was disappearing, he had returned almost to normal by the time we saw him here and had one been satisfied that just improving the anemia was sufficient, we could have abandoned investigation at this point, and missed what really was the most central feature of the case, namely, the underlying disease which caused the gastrointestinal bleeding. (Tr. 729, 801, 809)

129. Dr. Farquharson writes:

It is important that the physician should not consider that his responsibility is discharged when the hemoglobin has risen to normal. \* \* \* He must

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search for a bleeding lesion in all cases and especially in all men and older women and, having found its site give effective therapy if possible. (CX 35, p. 325)

130. It is interesting to observe that the above quotation is from a textbook entitled *Clinical Nutrition* edited by Dr. Norman Jolliffe. Respondents have made a point (see respondents' answer) of alleging that Dr. Jolliffe was the "developer" of their product. Yet in a book edited by Dr. Jolliffe, Dr. Jolliffe exhorts physicians to observe great care in the administration of iron, and not to rest until the cause of the iron deficiency anemia is located. Respondents' advertising, on the other hand, is silent concerning the danger of masking.

131. As has been shown by the above-cited testimony, both the witnesses called by the counsel supporting the complaint as well as witnesses called by the respondents show that there is a real danger of masking the signs and symptoms of iron deficiency or iron deficiency anemia by the taking of iron in general and by the taking of Geritol preparations in particular and thereby permitting the progression of the underlying causes of such bleeding.

XV. The Charge that Neither Geritol Liquid nor Geritol Tablets Will Increase the Strength or Energy of Any Part of the Body Within 24 Hours

132. Dr. Carl Moore, when asked whether Geritol Liquid or Geritol Tablets would increase the strength or energy of any part of a person's body within 24 hours, testified as follows:

The strength or energy which an individual is able to appreciate, no. \* \* \* If you are talking about something that happens at a microscopic level, there would be a change, but anything that an individual would be able to appreciate, no. (Tr. 1364)

He also testified that a man with symptoms of tiredness and irritability due to a moderately severe iron deficiency anemia "ought to have improvement but not necessarily entire disappearance of those symptoms within a period of a week to 10 days." (Tr. 1364, 1343).

133. Dr. Dameshek testified:

If a person has iron deficiency and has symptoms and is given iron, the first manifestations of improvement are not noted for at least a week to ten days. (Tr. 303)

134. Dr. Goldsmith testified:

With the dosage that is given here, it is an adequate therapeutic dose with three tablespoons a day of the liquid, and with adequate iron dosage in

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someone who has symptoms due to iron deficiency anemia one would expect improvement in about ten days to two weeks.

She made a similar statement with respect to Geritol Tablets (Tr. 384).

135. Respondents' witness Dr. Arrowsmith testified that in adults the reponse is "seldom very dramatic" (Tr. 3223).

136. Respondents' witness Dr. Wallerstein testified that with iron therapy "within a week many patients will feel better" and "others may take a little longer, yes. But actually, some seem to notice an improvement in two or three days" (Tr. 1633).

137. Respondents' witness Dr. Trobaugh testified that when a patient begins to feel better within a few hours, "Obviously, this is the placebo effect." (Tr. 3459).

138. Respondents' witness Dr. Wintrobe testified that when iron is injected there may be a subjective response within 24 to 72 hours but that "with oral therapy the response is somewhat slower" and "Say, within a week." (Tr. 4684-85).

139. Respondents' witness Dr. Dern testified at length about a study which he had performed on behalf of The J. B. Williams Company, Inc. to determine whether or not the iron contained in Geritol Tablets and Geritol Liquid does get into the red cells within 24 hours (RX 206, 207). These studies do show that a very small percentage (varying from one hundredth of one percent to 2.4 percent) of the dose administered to each of ten individuals did appear in the red blood cells in 24 hours, within the limits of error of the techniques (Tr. 3569-85).

140. With respect to the significance of these findings, Dr. Dern testified as follows:

Q. Do you feel that there are any other conclusions which can be drawn from the study which you performed? And by any other conclusions I mean, other than the conclusion as to the original question as to whether or not Geritol iron appeared in the blood within 24 hours.

A. I don't believe there are any other conclusions that I can draw from it, to be honest with you. (Tr. 3561-62)

141. Accordingly, we conclude that neither Geritol Liquid nor Geritol Tablets will increase the strength or energy of the body within 24 hours.

XVI. The Charge that Neither Geritol Liquid nor Geritol  
Tablets Will Be of Benefit in Promoting Convalescence  
From a Cold, Flu, Fever, Virus Infection, Sore  
Throat or Other Winter Illnesses

142. Dr. Dameshek, Dr. Goldsmith, and Dr. Carl Moore all

testified to the effect that neither Geritol Liquid nor Geritol Tablets will be of benefit in promoting convalescence from a cold, flu, fever, virus infection, sore throat or other winter illnesses (Tr. 304, 386, 1363).

143. Respondents' witness Dr. Friedman testified that:

Concerning a short cold, it will take seven days to recover without added vitamins, and a week to recover with added vitamins. I mean that is a possibility. (Tr. 4273)

144. Dr. Goldsmith was cross-examined concerning statements made by her in some of her earlier writings, particularly one published in 1946. This article is to the general effect that nutritive requirements are increased by psychological stress and in many diseased states. In particular, her statement was quoted:

Deficiency syndromes are often seen after trivial illnesses in areas of the country where the dietary habits are poor and food intake borders on inadequacy.

Dr. Goldsmith explained that while the quoted statement was probably correct in 1946, she did not consider it correct as of the present time. She stated that:

I certainly haven't seen any deficiency syndromes after trivial illnesses for many, many years. As a matter of fact, I see few deficiency syndromes any more. (Tr. 472)

145. Dr. Carl Moore testified that people with colds and similar ailments sometimes tend to eat less than a well person but that most people still manage to eat an adequate diet. He also added that:

\* \* \* we all have a pretty fair storehouse of vitamins, people in this country do at any rate, to tide one over handily over a temporary shortage. This is true of all the vitamins that I know of. (Tr. 1417)

146. The record contains no evidence to show that colds, flu, fever, virus infection and other winter illnesses produce in and of themselves a deficiency of any of the vitamins in Geritol. Respondents' advertisements, however, represent clearly that the Geritol preparations are designed for convalescence after or following a cold, with the principal emphasis on the iron content of the preparations. For example, Commission Exhibit No. 2 reads, in part, as follows:

Have you been feeling tired and run-down more frequently lately? Your trouble may be due to iron-poor blood, and this is often especially true after a fever, the flu or virus.

147. The record shows that dietary deficiency of iron must be continued for a considerable length of time before it produces an iron deficiency anemia. The respondents' representations, however, are to the effect that because of a possible lessened intake of food during the time a person has a cold, virus and so forth he may very well experience "iron-poor blood."

148. We conclude from the evidence in the record that Geritol preparations will be of no practical benefit in promoting convalescence following a cold or the other related disorders referred to in respondents' advertising.

XVII. The Charge that the Vitamins Supplied in Neither  
Geritol Liquid nor Geritol Tablets Are of Any Benefit  
in the Treatment or Relief of an Established or  
Existing Deficiency of Iron or Iron  
Deficiency Anemia

149. Dr. Dameshek testified that there is no synergistic effect between iron and vitamins; that the efficiency and effectiveness is not promoted by combining them with vitamins. He testified specifically that "Vitamins are of no value unless there is a specific vitamin deficiency." He testified further, "It has been adequately demonstrated that there is no synergistic effect." (Tr. 270)

150. Dr. Carl Moore likewise testified that he knew of no synergistic result of combining vitamins with iron. He has stated, however, in a reprint from the Harvey Lectures, respondents Exhibit No. 80, page 78, that:

The addition of a large amount of ascorbic acid (0.25 to 1 g.) to foods causes absorption of iron to be considerably increase.

Dr. Moore was writing about the absorption of food iron and not about the absorption of iron in the form presented in Geritol.

151. Respondents' witness Dr. Wintrobe when asked whether iron in Geritol Liquid would be absorbed any faster than iron given alone, answered:

I don't know off hand any basis for saying that the absorption of iron ammonium citrate from this mixture would be any different from the absorption from iron ammonium citrate given alone.

152. With specific reference to Geritol, Dr. Wintrobe testified that:

My objection is that one is given a lot of things that the patient may not need and, therefore, he is being asked to spend a lot more money and further-

more, if he had another kind of abnormality or deficiency, this could even cover that up \* \* \* (CX 2; Tr. 4705-06).

153. Respondents' witness Dr. Beutler, in a book entitled *Clinical Disorders of Iron Metabolism*, Respondents' Exhibit No. 60, page 179, makes a forceful statement concerning our present problem as follows:

#### Iron with Other Hematinics

Of the commercially available iron preparations, by far the majority are preparations in which iron is combined with one or several additional hemopoietic factors. These proprietary combination hematinics are promoted with great vigor and great success for the management of a surprising array of unrelated conditions. That this promotional effort has been overwhelmingly successful is seen in Table 3-V, and yet there is little that can be said about these preparations, except to condemn them. Perhaps one reason for the acceptance of these preparations by some segments of the medical profession is the tempting implication, inherent in the slogan "for all treatable anemias", that one may treat any anemia with such preparations without searching out the cause. It is not enough to observe that such irrational and costly combinations may impose an undue burden on the patient's pocketbook, or that they may compound the difficulty of subsequent diagnostic efforts. There is ample reason to believe that they may actually be deleterious in refractory anemias, and in pernicious anemia.

154. Dr. Finch, in Respondents' Exhibit No. 312, page 341, makes a similar statement to the one quoted above, concluding that:

It is quite clear that the recovery of the patient with uncomplicated iron deficiency anemia is not helped by vitamin supplements or minerals, and if there are other deficiencies, it is important to identify them rather than to obscure their presence with multiple therapy.

155. Although respondents present a number of witnesses who testify that there is a synergistic effect produced by the addition of vitamins to an iron preparation, we believe that the more persuasive evidence indicates the contrary. Accordingly, we find that the vitamins in the Geritol preparations are not of benefit in the treatment or relief of an established or existing deficiency of iron or iron deficiency anemia.

### XVIII. The Charge that the Unconditional Guarantee Is Not Observed

156. The complaint alleges that:

\* \* \* the purchase price of Geritol Liquid is not refunded unconditionally but there are terms and conditions which must be complied with by a purchaser in order for him to secure a refund, which terms and conditions are not disclosed in the advertisements.

157. In response to a Commission order dated March 11, 1963, counsel supporting the complaint specified that the terms and conditions referred to in Paragraph Five of the complaint which must be complied with by the purchaser in order for him to secure a refund and which are not disclosed in the respondents' advertisements are as follows:

1. That the purchaser must return the product or a part of it before Williams will fulfill its guarantee.
2. That the price of only one unit of Geritol will be refunded regardless of the number of units purchased.
3. That the offer to refund is terminated seven days after commencement of the use of Geritol.

158. The uncontradicted evidence shows:

1. That the return of all or part of the Geritol unit which was purchased is not required but that some showing by the purchaser that a purchase of Geritol was actually made is required.
2. That requests for refunds for more than one bottle of Geritol are *de minimis* but that they are sometimes paid.
3. That the purchaser's claim for refund need not be made within seven days and that no claims have been denied for that reason (Fitzgerald, Tr. 217, 219, 221, 228, 231, 235).

159. We believe that a guarantee of "your money back" necessarily implies that the claimant spent money in purchasing the product upon which he seeks a refund and, therefore, necessarily also implies that some indication of proof of purchase may be necessary. We believe that an advertisement is not false merely because it fails to state such obvious facts. Accordingly, we conclude that the evidence fails to support the above stated charge and that so much of the complaint as involves the charge relative to that unconditional guarantee should be dismissed.

#### XIX. Conclusions

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.
2. The complaint herein states a cause of action and this proceeding is in the public interest.
3. The dissemination by the respondents of the false advertisements as herein found 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.

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## XX. Order

*It is ordered,* That respondents The J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, 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 Geritol Liquid or the preparation designated Geritol Tablets, 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 which represents directly or by implication:

(a) That the use of such preparation will be of benefit in the treatment or relief of tiredness, loss of strength, run-down feeling, nervousness or irritability unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to an established or existing deficiency of one or more of the vitamins provided by the preparation, or to an established or existing deficiency of iron or to iron deficiency anemia, and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons, or of any age, sex or other group or class thereof, who experience such symptoms, these symptoms are due to 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.

(b) That the use of such preparation will be of benefit in the treatment or relief of tiredness, loss of strength, run-down feeling, nervousness or irritability due to an established or existing deficiency of iron, or to iron deficiency anemia, in adults other than women in the usual childbearing age group, unless such advertisement, in addition to the requirements of paragraph (a) hereof, clearly and conspicuously reveals the fact that an established or existing deficiency of iron, or iron deficiency anemia, in such adults, or in any age, sex or other group or class thereof, is almost invariably due to bleeding from some serious disease or disorder and that, in the absence of



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adequate treatment of the underlying cause the use of the preparation in such adults may mask the signs and symptoms and thereby permit the progression of such disease or disorder.

(c) That the use of such preparation will be of benefit in the treatment or relief of an established or existing deficiency of iron, or of iron deficiency anemia, in adults other than women in the usual childbearing age group, unless such advertisement clearly and conspicuously reveals the fact that an established or existing deficiency of iron, or iron deficiency anemia, in such adults, or in any age, sex or other group or class thereof, is almost invariably due to bleeding from some serious disease or disorder and that, in the absence of adequate treatment of the underlying cause the use of the preparation in such adults may mask the signs and symptoms and thereby permit the progression of such disease or disorder.

(d) That the use of such preparation will increase the strength or energy of any part of the body within 24 hours.

(e) That the use of such preparation will promote convalescence from a cold, flu, fever, virus infection, sore throat or other winter illnesses.

(f) That the vitamins supplied in such preparation are of any benefit in the treatment or relief of an established or existing deficiency of iron or iron deficiency anemia.

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 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 the affirmative requirements of, Paragraph 1, hereof.

*It is further ordered,* That so much of the complaint as charged that the purchase price of Geritol Liquid or Geritol Tablets is not refunded unconditionally if the purchaser is not satisfied with the product be, and the same hereby is, dismissed.

## APPENDIX

## I. Scientific Witnesses

The following are the witnesses who testified at the request

of counsel supporting the complaint in the above-entitled proceeding, primarily in the field of hematology:

1. *Adelson, Edward, M.D.*, magna cum laude, Tufts Medical School, 1947. Post graduate training at Mt. Sinai Hospital, New York City and Boston City Hospital. Currently director of Blood Research Laboratory, George Washington University Medical School; Assistant Clinical Professor of Medicine, George Washington University Medical School. Diplomate of the American Board of Medicine. Primarily engaged in the private practice of internal medicine and hematology, Washington, D.C. (Tr. 1178)

2. *Crosby, Col. William H., M.D.*, M.D. at U. of Pennsylvania, 1940. Post graduate training at Brooke General Hospital, Pratt Diagnostic Hospital, Boston, Mass. Medical Specialist at Queen Alexandra Military Hospital, London. Chief, Department of Hematology, Walter Reed Army Institute of Research since 1951. Chief Cancer Chemotherapy Program, Walter Reed General Hospital since 1960. Editorial Boards of *Blood* since 1953; *Transfusion* since 1960; *American Journal of Digestive Diseases*, since 1961. (Tr. 4977)

3. *Dameshek, William, M.D.*, presently Professor of Medicine at Tufts University School of Medicine, Boston, Mass. Senior Physician and Chief of Hematology, Pratt Clinic, New England Center Hospital and Blood Research Laboratory; Hematologist-in-Chief, Boston Floating Hospital and Boston Dispensary; founder and editor-in-chief of *Blood, The Journal of Hematology*. Past President of the International Society of Hematology, Boston, Mass. (Tr. 240)

4. *Farquharson, Ray Fletcher, M.D.*, M.D. University of Toronto, 1922; Fellow in pathology and bacteriology, University of Toronto, 1922-23; Post graduate work at Toronto General Hospital, 1923-26; Fellow in Medicine, University of Toronto, and research fellow at the Mass. General Hospital and Harvard University Medical School. Assistant Professor of Medicine and Head of Department of Therapeutics, University of Toronto. (Tr. 1050)

5. *Finch, Clement A., M.D.*, M.D. University of Rochester Medical School; post graduate training, Peter Bent Brigham Hospital, Boston, Mass. Research Fellow in hematology under Dr. Joseph Ross; Evans Memorial. Former instructor at Harvard Medical School. Presently Professor of Medicine, University of Washington School of Medicine, Seattle, Wash. Member of American Federation of Clinical Research, International Society of Hematology, Society of Nuclear Medicine and many other medical organizations. (Tr. 5165)

6. *Krevans, Julius, R., M.D.*, M.D. New York University. Post graduate work in pathology, Queens General Hospital, New York. Fellow in hematology, Johns Hopkins. Full time faculty member, Johns Hopkins University School of Medicine since 1953 to present. Consultant in hematology, Baltimore City Hospital. (Tr. 791)

7. *McGanity, William J., M.D.*, M.D. University of Toronto Medical School. Post graduate training, Toronto General Hospital. Research Fellow in Nutrition with Vanderbilt School of Medicine, Nashville, Tenn. Associate Professor in Obstetrics and Gynecology, Vanderbilt University. Fellow, Royal College of Surgeons of Canada. Present position is Professor and Chairman of the Department of Obstetrics and Gynecology, University of Texas, Galveston, Texas. (Tr. 910)

8. *Moore, Carl V., M.D.*, M.D. Washington University School of Medicine. Post graduate training, National Research Counsel Fellow at Ohio State University. Currently Professor of Medicine, Washington University; Head of the Departments of Medicine and Physician in Chief, Barnes Hospital. (Tr. 1318)

The following are the witnesses who testified at the request of counsel supporting the complaint primarily in the field of nutrition:

9. *Goldsmith, Grace A., M.D.*, M.D. University of Minnesota, 1936. Post graduate training, Touro Infirmary, New Orleans, La. Fellow, Internal Medicine, Mayo Clinic. Diplomate, American Board of Internal Medicine; American Board of Nutrition. Chairman, Food and Nutrition Board of the National Research Council. Currently Professor of Medicine, Tulane University, New Orleans, La. (Tr. 369)

10. *Vilter, Richard William, M.D.*, M.D. Harvard University, 1937. Post graduate work at Cincinnati General Hospital. Past president of the American Society of Clinical Nutrition. (Tr. 5221)

The following surgeon testified at the request of the counsel supporting the complaint during the rebuttal case:

11. *Moore, Francis D., M.D.*, M.D. Harvard Medical School. Post graduate work at Mass. General Hospital. Research Fellow, Medical Sciences, National Research Council. Presently Surgeon-in-Chief, Peter Bent Brigham Hospital, Boston, Mass., and Mosely Professor of Surgery, Harvard Medical School. (Tr. 5273)

The following are the scientific witnesses who testified at the request of the respondents:

12. *Albanese, Anthony August, Ph.D.*, Ph.D. Columbia University, 1940. Director of Research at St. Lukes Hospital, New York, N.Y. and Greenwich, Conn., Director of the Nutrition and Metabolic Research Division of the Burke Foundation and Rehabilitation Center. Associate Editor of the New York State Journal of Medicine. Member of American Society of Clinical Nutrition. (Tr. 4082)

13. *Alton, Edward William, Ed.D.*, Doctor of Education University of Maryland, 1955. On July 31, 1963, became Director of the Cooperative Extension Service for the State of Maryland, a position at the U. of Maryland in which he is in charge of the educational work done off campus with people all over the State relating to agriculture, home economics and related subjects. (Tr. 3927)

14. *Arrowsmith, William R., M.D.*, M.D. Ohio State University, 1938. Research Fellow Washington University Medical School of St. Louis, 1939-42. Currently Professor of Clinical Medicine at Tulane University. Head of the Departments of Hematology and Internal Medicine at the Ochsner Clinic in New Orleans. Consultant in Hematology, U. S. Public Health Marine Hospital in New Orleans and on the visiting staff in other hospitals in that city. Diplomate of American Board of Internal Medicine. (Tr. 3176)

15. *Benson, Ezra Taft, M.Sc.*, Bachelors degree from Utah State Agricultural College. M.Sc. in Agricultural Economics, Iowa State College. Post

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graduate work University of California. Former U.S. Secretary of Agriculture. (Tr. 4489)

16. *Beutler, Ernest, M.D.*, M.D. University of Chicago, 1950. Taught in the Dept. of Medicine and the Argonne Cancer Research Hospital, 1955-60. Associate Clinical Professor of Medicine of the University of Southern California. Diplomate in Internal Medicine. Fellow of the American College of Physicians. Member of the American and International Societies of Hematology. On Editorial Board of *Blood*; co-author of *Clinical Disorders of Iron Metabolism*. (Tr. 4782)

17. *Borsook, Henry, Ph.D.*, Ph.D. in biochemistry in 1924 at University of Toronto. Asst. Professor and Professor, California Institute of Technology in Pasadena, 1929-63. Consultant Huntington Memorial Hospital. Nutritional consultant Mt. Zion Hospital, Hollywood. Author *Nutritional Status of Aircraft Workers in Southern California*. (Tr. 4738)

18. *Briggs, Donald K., M.D.*, M.D. University of Cambridge, England, 1946. Adjunct Physician in hematology, Lenox Hill Hospital, New York. Member American Society of Hematology, the Society for the Study of Blood, and other professional organizations. (Tr. 2276)

19. *Cattell, McKeen, Ph.D., M.D., A.M., Ph.D., M.D.* Harvard University. D.Sc. Universidad de Antioquia in Colombia, 1948. Head of the Pharmacology Dept., Cornell University Medical College, 1937-59. (Tr. 2932)

20. *Chow, Bacon, F., Ph.D.*, Ph.D. in Chemistry, Harvard University. Worked two years Rockefeller Hospital. Taught biochemistry Peking Union Medical College in Peking until 1938. Associate Professor of Biochemistry, Johns Hopkins University School of Hygiene, 1949-present. (Tr. 3970)

21. *Clark, Faith, Ph.D.*, A.B. Wooster College, Wooster, Ohio. Master's and Ph.D. University of Chicago, Director, Consumer and Food Economics Research Division, Agricultural Research Service, U.S. Dept. of Agriculture since June 1957. (Tr. 2932)

22. *Craighead, Claude E., M.D.*, M.D. L.S.U. School of Medicine, 1939. Diplomate of the American Board of Surgery. Clinical Associate Professor of Surgery, L.S.U. School of Medicine. Senior Visiting Surgeon, Charity Hospital, New Orleans. Senior Surgeon, Touro Infirmary, New Orleans. (Tr. 3245)

23. *Dern, Raymond J., Ph.D., M.D.*, Ph.D. in physiology, University of Rochester School of Medicine, 1946; M.D. from same. Professor of Medicine, Stritch School of Medicine of Loyola, Chicago. Attending Physician, Cook County Hospital, Chicago. (Tr. 3530)

24. *Ebeling, William Carl, M.D.*, M.D. University of Maryland, 1944. Diplomate of the American Board of Internal Medicine. Currently Associate Professor of Medicine, University of Maryland Hospital. Fellow of the American College of Physicians. (Tr. 3701)

25. *Fein, Harry David, M.D.*, M.D. New York University, 1936. Currently Asst. Professor of Clinical Medicine at N.Y.U. School of Medicine. Diplomate of the American Board of Internal Medicine. (Tr. 2574)

26. *Friedman, Gerald J., M.D.*, M.D. New York University College of Medicine, 1937. Currently Associate Clinical Professor, Dept. of Physical Medicine and Rehabilitation. National Medical Director for the United

Parcel Service. Diplomate of the American Board of Internal Medicine and Fellow of the American College of Physicians. (Tr. 4193)

27. *Gold, Harry, M.D.*, M.D. Cornell University Medical College, 1922. Currently Professor of Clinical Pharmacology, Cornell. Head of the Cardio-Vascular Research Unit, Beth Israel Hospital. Fellow New York Academy of Sciences, AMA, American Association for the Advancement of Science. (Tr. 4447)

28. *Gyorgy, Paul, M.D.*, M.D. University of Budapest, 1915. Professor of Pediatrics, University of Heidelberg, 1927-33. Research Fellow, Nutritional Laboratory, Cambridge University, England, 1933-35. Professor of Clinical Pediatrics, University of Pennsylvania School of Medicine; currently teaches graduate course in nutrition there. Pediatrician-in-Chief of Philadelphia General Hospital. (Tr. 2215)

29. *Halpern, Seymour Lionel, M.D.*, M.D. New York University. Currently Asst. Clinical Professor of Medicine, New York Medical College. Diplomate of the American Board of Internal Medicine. President of the Planning Board of the Food and Nutrition Council of Greater New York. (Tr. 4280)

30. *Hock, Charles W., M.D.*, M.D. Duke University, 1941. Practicing gastroenterologist with 18 yrs. experience in Augusta, Ga. Presently an Associate Clinical Professor of Medicine in Gastroenterology at the Medical College of Augusta. (Tr. 3020)

31. *Holly, Roy Groves, M.D., Ph.D.*, M.D. University of Minnesota. Ph.D. same. Professor of Obstetrics and Gynecology, 1954-61. Chief of the Obstetric and Gynecologic Service, University of Nebraska. Dean of the Graduate School, Nebraska, 1961. Vice Chancellor of the University, Nebraska, 1962. President of the Association of Professors of Gynecology and Obstetrics. Member, American Hematology Society. (Tr. 3853)

32. *Leake, Chauncey D., Ph.D.*, Ph.D. University of Wisconsin, 1923. Professor of Pharmacology, Director of the Medical Branch, University of Texas, 1942. Currently lecturing in pharmacology, University of California. Past President of the American Association for the Advancement of Science. Past Chairman of the Section for Pharmacology and Therapeutics of the AMA. (Tr. 4592)

33. *McCawley, Elton L., Ph.D.*, Ph.D. University of California School of Medicine, 1942. Currently Professor in the Medical School of the University of Oregon. Asst. Coroner, City of San Francisco. Director of the Oregon Control Center for Poisons in the Physicians Reference Center. Acting as the County Coroner's Toxicologist in Portland, Ore. (Tr. 4529)

34. *McGavack, Thomas Hodge, M.D.*, M.D. Hahnemann College in Philadelphia, 1923. Professor of Clinical Medicine, New York Medical College. Director of the Geriatrics Research Laboratory, V.A. Center, Martinsburg, W.Va. Diplomate of the American Board of Internal Medicine. (Tr. 3790)

35. *McHardy, George Gordon, M.D.*, M.D. Tulane University, 1936. Currently President of the American Gastroenterological Association. Currently Clinical Professor of Medicine, Louisiana State University School of Medicine. Senior Visiting Physician, Charity Hospital, New Orleans. Diplomate American Board of Internal Medicine. (Tr. 1935)

36. *McLaughlin, Blaine E., M.D.*, M.D. University of the State of New

York. Presently Professor and Director of the Dept. of Psychiatry at Women's Medical College in Philadelphia. Member of the AMA. (Tr. 3755)

37. *Reznikoff, Paul, M.D.*, M.D. Cornell University Medical College, 1920. Teaching staff Cornell University Medical College, 1924. Emeritus Clinical Professor in Medicine, 1961. Charter member, American Society of Hematology and the Society for the Study of Blood. (Tr. 2403)

38. *Rosenthal, Robert, M.D.*, M.D. Columbia College of Physicians and Surgeons, 1946. Past 12 yrs. engaged in project supported by National Heart Institute. (Tr. 2976)

39. *Shapiro, Shepard, M.D.*, M.D. Bellevue Hospital Medical College, 1919. Research, Goldwater University Hospital, New York, 1942. Member, American and International Societies of Hematology. (Tr. 2754)

40. *Spindler, Evelyn B., Ph.D.*, Ph.D. University of Iowa in nutrition. Nutrition Specialist with the Federal Extension Service, U.S.D.A. Instructor, University of California at Davis. (Tr. 3945)

41. *Trobaugh, Frank E., M.D.*, M.D. Harvard Medical School, 1943. Associate Professor of Medicine in Hematology, University of Illinois Medical School. Since 1960, Director of Hematology in Clinical Laboratories and Blood Bank, Presbyterian St. Luke's Hospital, Chicago, Ill. Diplomate of the American Board of Internal Medicine. (Tr. 3404)

42. *Wallerstein, Ralph O., M.D.*, M.D. University of California, 1945. Presently Associate Clinical Professor of Medicine at the University of California. Chief of the Hematology Service and Director of the blood bank. Chief of the Hematology Research Laboratory, Children's Hospital, San Francisco. Diplomate of the American Board of Internal Medicine. (Tr. 1591)

43. *Welch, George E., M.D.*, M.D. Tulane University, 1945. Clinical Fellow, Cardiology and the Hematology Divisions, University of Washington Medical School, 1950-52. Currently Asst. Professor of Medicine, Tulane University. Director of the Louisiana Health Association. (Tr. 3333)

44. *Wintrobe, Maxwell Myer, M.D., Ph.D.*, Ph.D. Tulane, 1929; M.D. University of Manitoba, Can., 1927. Now Professor and Head of the Dept. of Medicine, University of Utah College of Medicine. Chief Consultant, Salt Lake Veterans Hospital. Physician-in-Chief, Salt Lake General Hospital. Past President of the Western Association of Physicians. (Tr. 4641)

## II. Glossary of Scientific Terms

1. Anemia—a condition in which the blood is deficient either in quantity (oligemia) or in quality. The deficiency in quality may consist in diminution of the amount of hemoglobin (oligochromemia) or in diminution of the number of red blood corpuscles (oligocythemia) or both.
2. Anoxia—oxygen deficiency
3. Ascorbic acid—vitamin C
4. C.C.—cubic centimeter
5. Carcinoid—epithelial tumor resembling a malignant carcinoma but following a benign course clinically
6. Cirrhosis—a degenerative disease of the liver, unless otherwise specified
7. Diverticulitis—inflammation of a diverticulum. Diverticulitis is a complication of diverticulosis.

8. Diverticulosis—the presence of a number of diverticula (offshooting cul-de-sacs) of the intestines
9. Enzyme—an organic compound, frequently a protein, capable of accelerating or producing by catalytic action some change in its substrate for which it is often specific
10. Fibroids—a fibrous, non-malignant tumor of the uterus unless otherwise specified
11. Gm.—abbreviation for gram
12. Hematocrit—a measurement of the volume of the red blood cells, in term of percentage of volume of the blood
13. Hematology—study of disease of the blood; a sub-specialty of internal medicine
14. Hemoglobin—an iron-containing protein; the coloring matter of the blood. It is contained in the red blood cells and functions as the carrier of oxygen to the cells of the body
15. Hemorrhage—bleeding, a flow of blood especially if it is very profuse
16. Hiatus hernia—a herniation of the stomach through the diaphragm into the chest. Also termed hiatal hernia and diaphragmatic hernia.
17. Hypochromic—“under colored”; having less than the normal hemoglobin content, as applied to red blood cells
18. Ileitis—inflammation of the ileum, the terminal portion of the small intestine
19. Intussusception—the slipping of one part of the intestine into an adjacent part, often resulting in obstruction of the bowel
20. Jejunum—second section of the small intestine
21. Mg. or mgm.—abbreviations for milligram
22. Ml.—abbreviation for milliliter. Used interchangeably for c.c. or cubic centimeter, although technically they are identical only under standard conditions of temperature, pressure, etc. For all practical purposes they are identical.
23. Mallory-Weiss Syndrome—a syndrome that occurs in the chronic alcoholic in which the stress of vomiting tears blood vessels near the gastro-esophageal junction, producing hemorrhage which is often fatal
24. Meckle's Diverticulum—a diverticulum of the jejunum or ileum, normally present at birth, which usually but not always disappears a few weeks after birth. If it persists it may cause strangulation or intussusception.
25. Melena—dark stools due to the presence of blood
26. Menopause—permanent cessation of the menses; termination of the menstrual life
27. Menorrhagia—excessively profuse menstruation
28. Metrorragia—abnormal uterine bleeding between menstrual periods
29. Microcytic—abnormally small
30. Myoglobin—the red substance in muscle tissue
31. Neoplasm—“new growth”, as any kind of tumor, benign or malignant. Cancer is frequently referred to as a neoplasm or neoplastic disease.
32. Niacin—or nicotine acid; one of the B Complex vitamins

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33. Occult bleeding—hidden bleeding; that which is not recognized as such by the patient
34. Pellagra—a deficiency disease, due to a deficiency of niacin (nicotinic acid)
35. Peptic ulcer—an ulcer caused by action of the peptic or stomach juices on the lining of the gastrointestinal tract. A gastric ulcer is a peptic ulcer in the stomach. A duodenal ulcer is a peptic ulcer in the duodenum. An esophageal ulcer is peptic ulcer in the esophagus.
36. Plasma—the fluid part of the blood
37. Synergism—the joint action of agents so that their combined effect is greater than the sum of their effects acting independently. Synergistic: enhancing the effect of another force or agent.
38. Telangiectases—usually telangiectasia, hereditary. A local vascular abnormality, hereditary in nature.
39. Thiamine—Vitamin B<sub>1</sub>
40. Varices—dilated veins

## OPINION OF THE COMMISSION

SEPTEMBER 28, 1965

By DIXON, *Commissioner*:

The complaint in this matter charges respondents with disseminating false advertisements in promoting the sale of two drug preparations, Geritol Liquid and Geritol Tablets,<sup>1</sup> in violation of Sections 5 and 12 of the Federal Trade Commission Act. The hearing examiner held that the alleged misrepresentations as to the effectiveness and safety of the products were sustained by the evidence and ordered respondents to cease and desist from these practices. Respondents have appealed from these findings and order. Counsel supporting the complaint has not appealed from the examiner's holding that respondents have not misrepresented the terms of their refund agreement.<sup>2</sup>

A basic issue presented by respondents' appeal is the interpretation to be accorded to their advertising. In particular, respondents contend that the hearing examiner failed to give sufficient weight to the testimony of their expert witnesses as to the meaning of the

<sup>1</sup> While the formula for these two preparations differ, these differences are not generally significant in deciding the issues in this case. The two products will sometimes be referred to collectively as "Geritol" in this opinion.

<sup>2</sup> The hearing examiner's order is directed against The J. B. Williams Company, Inc., which sells and distributes Geritol, and against Parkson Advertising Agency, Inc. Parkson was founded by Williams in 1957. Although technically it is not a subsidiary, in practicality it is Williams' advertising division. Parkson is completely owned by the stockholders of Williams and advertising Geritol is 95 percent of its business. The president of Parkson is also the vice-president and advertising director of Williams. His testimony establishes that Parkson prepares the advertisements for Geritol and that he approves their dissemination in his joint capacity as an officer in both corporations.



advertising claims challenged in the complaint. To the extent that this argument implies that in the absence of other testimony, the examiner was bound by the testimony of respondents' witnesses, it is obviously erroneous.

The examiner has set forth his reasons in support of his interpretation of respondents' advertising and for his rejection of the testimony of respondents' witnesses. Moreover, we have the advertising before us and we are not persuaded by the testimony of these witnesses.<sup>3</sup> It is, of course, well settled that the Commission has the authority to draw upon its own experiences in interpreting advertising. *Stauffer Laboratories, Inc. v. Federal Trade Commission*, 343 F. 2d 75 (9th Cir. 1965); *E. F. Drew & Co. v. Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956). As more fully developed in our discussion of each issue, the best that can be said for respondents' arguments as to the meaning of their advertising, as supported by the testimony of their witnesses, is that their claims may be susceptible of two interpretations. The courts have made it clear that, if one of two possible interpretations is misleading, the claims will be construed against the advertiser. *Murray Space Shoe Corp. v. Federal Trade Commission*, 304 F. 2d 270 (2d Cir. 1962).

Two of the charges sustained by the examiner relate to respondents' alleged failure to reveal material facts in their advertising. Respondents' appeal is devoted chiefly to these issues. However, respondents have also taken exception to the examiner's findings as to what they characterize as "three comparatively minor charges" in the complaint. We will first consider these charges since the primary issue with respect to all three involves a determination as to the meaning of the challenged representations.

The first of these charges is that respondents have falsely represented that Geritol will increase the strength and energy of every part of the body within 24 hours. In this regard, respondents' advertising claims that "In only *one* day GERITOL-iron is in your bloodstream carrying *strength* and *energy* to *every* part of your body." (CX 6, emphasis in original.) Since the evidence establishes that 1/100 of 1 percent to 2.4 percent of Geritol's iron will be distributed throughout the body in 24 hours, respondents argue that their claim is true. This is all, respondents allege, that the advertisement promises. The examiner, however, found that respondents are assuring relief *noticeable to the consumer* within 24 hours in that the ad "holds out the promise of much more in the way of strength

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<sup>3</sup> Certain of respondents' advertisements in issue are set forth in full text as an addendum to this opinion.

and increased energy than a mere microscopic change in an individual's blood."

One such television ad in which the claim appears depicts a husband who is "just too tired to budge." He takes Geritol and then is shown dancing with his wife. While the man is dancing, the announcer is saying "In only *one day* GERITOL iron is in your bloodstream carrying strength and energy \* \* \* to every part of your body." (Emphasis added.) There can be no doubt as to the meaning of the representation in this context, and we are in complete accord with the hearing examiner's interpretation.

We find no substance in respondents' contention that the examiner failed to consider the further statement in this same advertisement that "[you'll] *feel stronger fast* \* \* \* within seven days \* \* \* or money back." (Emphasis in original.) This statement is made two scenes after the "one day" claim, and the reference to "seven days" obviously does not detract from the viewer impression of relief within 24 hours. In fact, the conspicuous emphasis of the two time sequences is that, within one day after taking Geritol, you will experience a noticeable increase in strength and energy, and if such physical phenomena doesn't occur within seven days your money will be refunded.

The undisputed evidence establishes that with persons suffering from iron deficiency, the time lapse between taking Geritol and any appreciable increase in strength and energy is substantially longer than 24 hours. Estimates by several medical witnesses placed the interval as high as 10 days to 2 weeks. Respondents' own witness who conducted a study to show that the iron in Geritol appears in the red blood cells in very small percentages within 24 hours, testified that no other conclusions could be drawn from his study. Information that a small percentage of iron from Geritol enters the bloodstream within one day is of no consequence to a tired person unless he also believes that his strength and energy will increase within that time. Respondents' advertising conveys that belief. Such advertising is misleading and deceptive, and respondents' appeal on this issue is denied.

Although we find no error in the hearing examiner's ruling on this issue, we are of the opinion that the provision in his order as to this practice is too limited. Specifically, the examiner's order only bars respondents from representing that Geritol will increase strength or energy "within 24 hours." Obviously, 24 hours is of no significance other than that it is the time period respondents have elected to use in their advertising claims. Basically, of course, the

practice at which the complaint is directed, and which has been established on this record, is that of misrepresenting the length of time within which Geritol will provide relief. The hearing examiner's order will be amended to fully prohibit that practice.

We next consider the charge that respondents have falsely represented that Geritol will promote convalescence from winter illnesses.

Following a film clip of a winter scene and the sound of howling wind, there is the statement in several Geritol television advertisements that:

As a result [of winter weather], have you been in bed with a cold, flu, fever? After such an illness, if you suffer from iron-poor blood you may find that recovery is slow. To get back your normal strength fast, when this is your problem, you should build up iron-poor blood. (CX 3.)

In the hearing examiner's view, this statement indicates that there is a reasonable probability that Geritol will promote convalescence from these winter illnesses. Respondents, however, contend that these advertisements are directed only toward iron or vitamin deficient individuals who also happen to be recuperating from a winter illness.<sup>4</sup>

As the courts have held, the important criterion in determining whether an advertisement is false and misleading is the net impression which it is likely to make upon the general population.<sup>5</sup> We have no doubt that insofar as the viewing public is concerned, respondents' interpretation is too restrictive. The advertising is worded so as to apply to a person suffering from iron poor blood *after* a winter illness. The obvious implication is that winter illnesses may cause iron poor blood from iron or vitamin deficiencies and that Geritol will speed recovery by curing these deficiencies.

The hearing examiner, in reaching his conclusion as to the meaning of respondents' claim, relied, in part, on an excerpt from another advertisement. Respondents point out that the advertisement is not produced in full in the initial decision. Their failure to explain how the full text of the advertisement is of any benefit to them is understandable. The pertinent part of the advertisement, in full text, reads:

Have you been feeling tired and rundown more often than usual? Your trouble may be due to iron-poor blood. And this is often especially true after

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<sup>4</sup> In their appeal on this issue, respondents state that "If an iron-deficient person gets a cold or the flu, the combined symptoms will be more oppressive than a simple cold or flu. In such cases, Geritol will help." (Emphasis added.)

<sup>5</sup> *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. 2d 676 (2d Cir. 1944). *Murray Space Shoe Corp. v. Federal Trade Commission*, *supra*. *Aronberg v. Federal Trade Commission*, 132 F. 2d 165 (7th Cir. 1942).

a fever, the flu or virus. During such an illness you may be on a liquid diet, or eat light foods. As a result, you may continue to feel a lack of strength and energy after your illness, *because the essential iron in your blood is reduced and your resistance is low.* (CX 2, emphasis added.)

The evidence establishes and respondents do not contend otherwise on this appeal, that winter illnesses such as a cold, flu or fever will not cause iron poor blood. Respondents' advertising which tends to create that impression is misleading. The appeal on this issue is likewise denied.

Respondents are further charged with falsely representing that the vitamins contained in Geritol contribute to the effectiveness of the products in the treatment or relief of an existing deficiency of iron or iron deficiency anemia.

Respondents advertise that:

Vitamins *alone* can't build up iron-poor blood. But GERITOL *can!* Because GERITOL not only contains 7 important vitamins but, in addition, supplies the therapeutic amount of iron needed to build iron-rich red blood. Just 2 GERITOL tablets, or 2 tablespoons of GERITOL liquid, contain *twice* the iron in a pound of calves' liver! It is this rich source of iron, in combination with high-potency vitamins that makes GERITOL such an effective strength-building tonic. (CX 7, emphasis in original.)

In a two-pronged defense, respondents first deny the examiner's finding that this type of advertisement represents that the vitamins in Geritol will contribute to its effectiveness in the treatment of an iron deficiency. They contend further, however, that even if the examiner's interpretation is correct, the evidence establishes that the vitamins in Geritol actually do assist the treatment of an iron deficiency.

This claim of respondents, after stating that vitamins "alone" can't build up iron-poor blood, emphasizes the addition of "7 important vitamins" to Geritol and extols Geritol's strength-building effectiveness through its source of iron "in combination with high-potency vitamins." The fact that the remainder of the advertisement talks about the amount of iron supplied by Geritol does not detract from the obvious impression that the vitamins in Geritol make it a better remedy for iron deficiency than a preparation containing only iron. If, as respondents contend, the advertisement is designed to say that only an iron preparation will benefit deficiencies of iron, the stress laid upon the addition of vitamins is at least confusing and hence misleading.

As regards their second defense, the respondents contend that the evidence establishes that certain vitamins in fact contribute to the body's ability to absorb iron. The examiner relied on the

direct testimony of medical experts that there is no synergistic effect between iron and vitamins and that the vitamins in Geritol do not affect or help iron deficiency.

We have reviewed the evidence relied upon by respondents and find that, at best, it establishes that Vitamin C may facilitate the absorption of iron. Respondents, however, have added Vitamin C only to Geritol Tablets, not to Geritol Liquid. Moreover, the reference to vitamins in their advertising is not limited to Vitamin C but falsely represents that all seven "important vitamins" in Geritol contribute to its effectiveness in relieving iron deficiency.

We find no error in the examiner's ruling on this charge.

We turn next to one of the two issues which, in addition to requiring an interpretation of respondents' advertising, also involves a determination as to possible deception through a failure to disclose material facts.

The hearing examiner found that, as charged in the complaint, respondents have falsely represented that there is a reasonable probability that all persons with the symptoms described in respondents' advertisements, *i.e.*, tiredness, loss of strength, run-down feeling, nervousness and irritability,<sup>6</sup> will respond to treatment by the use of Geritol. Respondents strongly dispute this finding, contending first that it is based on an erroneous interpretation of their advertising. It is respondents' position that their advertisements are directed only to those persons in whom these symptoms are due to iron deficiency.

The following are typical of the statements in respondents' advertising:

\* \* \* if you *often* have that tired and run-down feeling \* \* \* and if you take vitamins yet *still* feel wornout, remember \* \* \* your trouble may be due to iron-poor blood. And vitamins *alone* can't build up iron-poor blood. But GERITOL can! (CX 1, emphasis in original.)

They say there's a reason for everything. Now, if you've been feeling tired and run-down, the reason may be iron-poor blood. And that's why, even though you take vitamins, you may still feel tired. For vitamins *alone* can't build up iron-poor blood. But GERITOL can! Medical tests prove it! (CX 12, emphasis in original.)

Patients diagnosed with iron-deficiency anemia frequently were pale, nervous, irritable and easily tired. After patients took GERITOL daily, doctors reported definite clinical improvement. Remember, ordinary maintenance vitamins can't do it! But the high-potency combination of vitamins *plus* iron in GERITOL *can* help you regain your strength and energy.

So when you feel tired and this is your problem, take fast-acting GERITOL *every day*. (CX 7, emphasis in original.)

<sup>6</sup> These symptoms will hereinafter be referred to as the "tiredness symptoms." They were treated as a group throughout the testimony in this case.

In addition to similar statements, other Geritol television commercials portray men and women who appear exhausted (such as a woman tidying up a boy's room) with whom viewers can readily identify themselves.

These advertisements, appearing mostly on television or in newspapers, are viewed, heard or read by the general population, including all persons with tiredness symptoms from whatever cause. In substance, these people are told that "the reason" they feel tired and worn-out "may be iron-poor blood," and that Geritol "can help" them regain their strength and energy. This is an obvious invitation to any person with tiredness symptoms to self-diagnose his trouble as a deficiency of iron—and take Geritol. In other words, respondents, by constantly telling *all* tired people that their trouble may be iron deficiency, thereby imply that iron deficiency is a common affliction, such as a cold or a headache, and that their tiredness generally indicates this condition. Moreover, the alleged reference to iron deficiency in certain of respondents' advertising is so vague as to be meaningless. This is particularly apparent in the newspaper advertisement quoted above (CX 7), where the claim is made "So when you feel tired and this is your problem, take fast-acting GERITOL *every day*." While respondents contend that the phrase "and this is your problem" refers to iron deficiency, we think that, insofar as the impression upon the mind of the reader seeking relief from tiredness is concerned, this phrase may as well be omitted from the sentence.

Despite respondents' argument to the contrary, we find that the implication in their advertising that a person can self-diagnose a deficiency of iron from his tiredness symptoms, is not dispelled by the phrase "check with your doctor." In the first place the word "check" suggests that the viewer go to the doctor only to verify a condition that he is quite capable of drawing himself. Moreover, this phrase is usually followed by another statement which completely obscures its meaning, such as "Check with your doctor. And if you've been feeling wornout because of iron-poor blood—take GERITOL." On the interpretation most favorable to respondents, this advertising suggests that the tired viewer have his condition diagnosed by a doctor and then treat himself according to a television statement. We fail to see how this unlikely suggestion clarifies the meaning of the advertisement.

We find no error in the examiner's interpretation of respondents' advertising. We have carefully examined this advertising and it is our opinion that its meaning is clear. It says, in effect, that any

member of the general population feeling tired and worn-out may reasonably conclude that his symptoms indicate a deficiency of iron and that the common, effective remedy for these symptoms is Geritol.

It is clearly established on this record that tiredness is not a generally reliable indication of iron deficiency. As found by the examiner, it is the testimony of both complaint counsel's and respondents' medical experts that the tiredness symptoms are common to many diseases and disorders. Certain of these witnesses, relying on their experience, further testified that the commonest causes of these symptoms are neurosis and anxiety. Moreover, there is substantial evidence that most mild iron deficiency does not produce any symptoms.<sup>7</sup>

In substance, the evidence establishes that there is little relationship between the tiredness symptoms and iron deficiency. Not only is it clear that a person cannot rely on the tiredness symptom as an indication of a deficiency of iron but it is also well established on this record that a medical test under the supervision of a physician is generally required to determine such deficiency. There is the unrefuted testimony of several medical experts that a person cannot diagnose for himself whether he has an iron deficiency. These medical experts testified at length as to the tests which they are required to perform to make this determination. These tests are fully described by the hearing examiner in his initial decision.

We find, therefore, that the representation implicit in respondents' advertising, that a person can determine the presence of iron deficiency or iron deficiency anemia from his tiredness symptoms is misleading in a material respect. Our order will include a prohibition against this practice.

The next issue raised by respondents' appeal is whether the examiner erred in finding that only a small minority of persons having the tiredness symptoms have a deficiency of iron or one or more of the vitamins in Geritol.

In support of this finding, the examiner relied in part upon testimony as to the incidences of iron and vitamin deficiency in the general population. The consensus of the medical experts, including respondents', is that less than 10% of the general population has iron deficiency. As to vitamin deficiency, three experts,

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<sup>7</sup> Even with respect to severe iron deficiency, the record discloses that the primary symptoms are not those for which Geritol is advertised. For example, they include such symptoms as cracks at the corner of the mouth; smooth, sore tongue, brittle or spoon-shaped fingernails; and early greying of hair.

well qualified in the field of nutrition, testified that such deficiency is extremely rare in this country, and all three were of the opinion that, of the total population, less than 1% has vitamin deficiency.

While not seriously disputing the 10% figure as to iron deficiency, respondents contend that the incidence of vitamin deficiency is higher than 1%. We have reviewed the evidence relied upon by respondents in support of their contention and we are not persuaded. In substance, much of this evidence is the testimony of respondents' medical experts that certain groups have symptoms which could be caused by vitamin deficiency; that a "not negligible" percentage of persons examined in a particular study had some form of nutritional deficiency; that old people living alone tend to have poor diets and are thus prone to vitamin deficiency; that high school girls may not eat enough because they worry about weight; and that vitamins can be lost from food through cooking or storage. In contrast to this testimony, the medical experts relied upon by the examiner based their testimony upon actual incidences of vitamin deficiency which they have observed in dealing with the general population.

Respondents also contend that a survey by the Department of Agriculture showed that nearly 50% of American families had food supplies that provided inadequate nutrients. This survey, which was conducted in 1955, involved interviews with householders to determine the food they had used during a week's period. The vitamin and mineral content of this food was ascertained and a comparison made with the Recommended Dietary Allowances of the National Research Council for 1953. While this survey showed that a number of people did not consume the *recommended* dietary allowances, the evidence establishes that the recommended allowances included a safety factor of 50% to 100% over average needs. Included in a report of this survey is a statement by the Department of Agriculture that "This does not prove that all of those families were poorly fed or subject to malnutrition; the recommended allowances provide a considerable margin of safety over average needs." Obviously, this survey is of little value in establishing incidences of actual vitamin deficiency.

Although contesting the examiner's findings as to the incidence of vitamin deficiency, respondents' basic argument on this issue is that the percentage of iron and vitamin deficiency in the general population is of no consequence in determining the proportion of the population with tiredness symptoms who will benefit from taking Geritol. In substance, they contend that, in the absence of



evidence of controlled studies of tired persons to determine how many of them have iron or vitamin deficiency, there is no valid basis on this record for concluding that in only a small minority of persons is tiredness due to a deficiency of iron or one or more of the vitamins in Geritol.

We do not regard the lack of controlled studies as the determining factor on this issue. As we have found, respondents' advertising is directed to the entire population of whom less than 10% have iron deficiency and less than 1% are deficient in vitamins. Most of this group who experience tiredness do not do so as a result of their deficiencies since mild cases produce no symptoms. The inescapable conclusion is that the number of people in the total population who are tired because of iron or vitamin deficiency is infinitesimally small. Unless, therefore, this small group of people, or a majority of them, are the only ones in the entire population who experience tiredness symptoms, respondents' argument must fail.

The overwhelming weight of the evidence is to the contrary. As we have previously found, the testimony of medical experts, as set forth in the initial decision, establishes that the tiredness symptoms are common manifestations of almost any disease or disorder, and that the commonest causes of tiredness are neurosis and anxiety. Included among the witnesses testifying to this effect are two of respondents' experts, Dr. Arrowsmith and Dr. Fein, both of whom stated that the majority of persons with tiredness symptoms do not have iron deficiency.

Contrary to respondents' contentions, we conclude that the charge in the complaint that Geritol will benefit only a small minority of persons with tiredness symptoms, is supported by substantial evidence in this record.

This leads to the charge, sustained by the examiner, that respondents' advertising is misleading because it fails to reveal the material fact that in the great majority of persons, or of any age, sex or other group or class thereof, who experience the tiredness symptoms, these symptoms are not caused by an existing deficiency of iron or one or more of the vitamins contained in Geritol, and that in such persons Geritol will be of no benefit.

Section 15 of the Federal Trade Commission Act expressly provides that in determining whether an advertisement of a drug preparation is misleading, there shall be taken into account the extent to which the advertisement fails to reveal facts material in

the light of the representations made or suggested in such advertisements.

We have previously discussed the representations in the Geritol advertising. The issue first presented is whether it is material in the light of such representations that Geritol will not be of benefit in relieving tiredness in the great majority of persons having such symptoms. The next issue is whether an affirmative disclosure of this fact, if it is material, is necessary to prevent the public from being misled by the claims in the Geritol advertising.

We have found that respondents' advertising is directed to the entire population and represents that Geritol is a generally effective remedy for tiredness. All people with tiredness symptoms are told that their problem may be iron deficiency. This advertising clearly suggests to a tired person the reasonable probability that his tiredness symptoms are the result of a condition that will respond to the taking of Geritol, namely, iron or vitamin deficiency. The evidence establishes, however, that in only a small minority of cases are tiredness symptoms due to a deficiency of iron or one or more of the vitamins in Geritol. It establishes further that in all other cases Geritol will be of no benefit whatever in relieving these symptoms. In the light of the representations with respect to the effectiveness of Geritol on tiredness symptoms which dominate the Geritol advertisements, these limitations on its actual effectiveness are highly material. Respondents' advertisements do not disclose these limitations. The result is that the claims of beneficial effects made in such advertisements are clearly misleading and constitute "false advertisements" within the meaning of Section 15.

We think it clear that the deception inherent in the advertising can be fully prevented only (1) by omitting from such advertising all reference to the effectiveness of Geritol on tiredness symptoms, or (2) if claims of effectiveness of Geritol on such symptoms are made, by an express statement of the limitations of such effectiveness.

This record discloses that there are numerous causes of the tiredness symptoms other than a deficiency of iron or vitamins, and that these symptoms are common manifestations of almost any disease or disorder. Physicians, of course, are generally aware of the true facts concerning the relative frequency of tiredness symptoms from conditions other than iron or vitamin deficiency. Members of the public, to whom Geritol advertising is directed, are not so informed. It is only through a diagnosis by a physician that the presence of a deficiency of iron or vitamins can be determined. Thus,

even advertisements which offer Geritol for relief of tiredness caused only by a deficiency of iron are not sufficiently informative to a member of the public who cannot determine for himself whether his tiredness is due to such cause or to one of many other causes. Before the likelihood of deception can be dispelled from such advertising, the prospective purchaser must be fully informed as to the relative frequency of the occurrence of tiredness as a result of conditions other than a deficiency of iron or vitamins, and of the further fact that Geritol will not relieve tiredness caused by such other conditions.<sup>8</sup>

This affirmative disclosure is necessary in every instance in which Geritol is advertised as a treatment for the relief of the tiredness symptoms. The purpose of such disclosure is to remove the likelihood of deception inherent in any claim of effectiveness for Geritol on the tiredness symptoms, even though such claim be limited to tiredness symptoms due to iron or vitamin deficiency. It seems obvious, however, that the likelihood of the public being deceived into believing that other than a small minority of tired persons will find relief for these symptoms by taking Geritol will continue to exist if in any advertisement the other representations are inconsistent with the facts affirmatively disclosed.<sup>9</sup> Such other claims can only serve to confuse and thereby deceive, thus nullifying the purpose of the required disclosure. Therefore, in advertising in which an affirmative disclosure is required, respondents may make no representations, directly or by implication, which in any way negate or contradict the facts which are affirmatively disclosed. In other words, if despite the affirmative disclosure, any advertising conveys the impression that Geritol will be of benefit in relieving tiredness generally or in other than a small minority of persons with such symptoms, such advertising will be deceptive and in violation of the order to be entered herein.

We agree with respondents, however, that the provision in the hearing examiner's order relating to the affirmative disclosure is too broad in scope. Specifically, evidence introduced by respondents discloses that there are certain small groups of persons in the entire population in which iron or vitamin deficiencies may be significant. While this evidence is not sufficient to overcome the substantial

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<sup>8</sup> *In the Matter of Keeie Hair & Scalp Specialists, Inc.*, 55 F.T.C. 1840 (1959).

<sup>9</sup> Under this order, as under similar orders requiring affirmative disclosure of facts necessary to prevent an otherwise unqualified claim from being false or misleading, the disclosure must be made in immediate or close proximity with the claim and with equal prominence. The advertisement, regarded as a whole, should not leave any impression negating or obscuring the necessary affirmative disclosure, for otherwise the order would be rendered nugatory.

evidence as to the minor incidences of iron and vitamin deficiencies in the general population, it does negate a finding that a majority of tired persons in these small groups does not suffer from iron or vitamin deficiency and would not respond to Geritol. To the extent that the requirement for an affirmative disclosure in the examiner's order extends to these groups, it is in error and will be amended.

Respondents' argument that the court's ruling in the *Alberty* case<sup>10</sup> precludes the Commission from requiring an affirmative statement in their advertising is without substance. In the first place, it is well settled that where deception of the public has been found, the choice of a remedy is particularly within the discretion of the Commission.<sup>11</sup> The authority of the Commission to require an affirmative disclosure where necessary to prevent such deception has long been recognized.<sup>12</sup>

In the *Alberty* case, the court ruled that merely *informative* disclosure cannot be required. The court referred to the definition of a false advertisement in Section 15 of the Federal Trade Commission Act, and held that the Commission must make certain findings before it can require affirmative disclosure. The court set aside the Commission's order requiring a disclosure on the grounds that no such finding had been made.

One of the things which the court in the *Alberty* case held would support an affirmative statement in advertising is a finding "that failure to make such statement is misleading because of things claimed in the advertisement."

In the case before us, the complaint charges that respondents' failure to make an affirmative disclosure in their advertising in the light of the representations therein is in itself a cause of deception. The evidence of record, as previously discussed herein, fully supports that charge and we have so found. We think it clear on this record that an affirmative disclosure is required to dispel the otherwise misleading representations in respondents' advertising.

Where, as here, the facts support the finding prescribed in the *Alberty* case, the courts have consistently upheld the Commission's order. In particular, in several cases involving the advertising of preparations for preventing baldness, the courts have expressly ruled that the *Alberty* decision is no bar to an order requiring affirmative disclosure.<sup>13</sup> In those cases, the Commission's order

<sup>10</sup> *Alberty v. Federal Trade Commission*, 182 F. 2d 36 (D.C. Cir. 1950).

<sup>11</sup> *Federal Trade Commission v. Mandel Bros., Inc.*, 359 U.S. 385 (1959).

<sup>12</sup> *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954 (7th Cir. 1951); *Haskelite Manufacturing Co. v. Federal Trade Commission*, 127 F. 2d 765 (7th Cir. 1942).

<sup>13</sup> *Ward Laboratories, Inc. v. Federal Trade Commission*, 276 F. 2d 952 (2d Cir. 1960); *Keele Hair & Scalp Specialists, Inc. v. Federal Trade Commission*, 275 F. 2d 18 (5th Cir. 1960).

required the advertisers to limit their claims for prevention of baldness to those cases not of the male pattern variety and to disclose that nearly all cases of baldness fall within that category and that in such cases the preparations would be of no value. These orders were based on a finding that the companies had represented that their preparations would cure all causes of baldness and the further finding that most baldness is of the male pattern type on which the preparations would have no effect, and that the failure to affirmatively disclose this fact in advertising was misleading. Particularly appropriate to the Geritol advertising is the comment by the court in one of these cases,<sup>14</sup> that "petitioners' own advertising requires the antidote" because it gave the impression that the condition for which the preparations were offered was largely caused by something which the preparations could cure.

The unsoundness of respondents' argument that the *Alberty* case bars the Commission from entering an order requiring an affirmative disclosure is further reflected in the fact that the same circuit which decided the *Alberty* case, in a subsequent decision, upheld a Commission order containing such a requirement.<sup>15</sup>

The remaining issue before us involved the "masking" charge. In substance, the complaint charges that respondents' advertisements are "misleading in a material respect because they fail to reveal the material fact \* \* \* that, in women of any age beyond the usual child-bearing age and in men of all ages, an established or existing 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 and symptoms and thereby permit the progression of such disease or disorder."

The hearing examiner sustained the charge, concluding from the evidence that there is a "real danger" of masking the signs and symptoms of iron deficiency anemia by the taking of Geritol. While in effect conceding that a theoretical possibility of such masking exists, respondents contend that this record establishes that the combination of circumstances that would in theory permit masking to occur is almost never present.

Of primary importance in deciding this issue is the meaning given to certain of the terms used in the complaint. In particular, the validity of this charge depends to a great extent upon the intended

<sup>14</sup> *Ward Laboratories, Inc. v. Federal Trade Commission*, *supra*, at 955.

<sup>15</sup> *Theodore Kagen Corp. v. Federal Trade Commission*, 283 F. 2d 371 (D. C. Cir. 1960).

meaning of the assertion that iron deficiency is "almost invariably" due to bleeding from some "serious disease or disorder."

As found by the examiner, the term "almost invariably" was defined by counsel supporting the complaint at a pretrial hearing as being synonymous with "always." Although not mentioned by the examiner, it also appears that at the pretrial hearings, respondents were informed by complaint counsel that the words "serious disease or disorder" meant "one which causes bleeding and which normally progresses from a less serious to a more serious state."

As thus defined and tried, the charge has not been established. In the first place, the evidence primarily relied upon by the examiner is the testimony of medical experts to the effect that, if they found iron deficiency anemia in a patient, they would suspect that it was caused by bleeding and would look for the cause. However, we believe that the examiner erred in concluding from this testimony that iron deficiency anemia is always caused by bleeding. While the primary concern of a doctor may be bleeding, in our view this falls short of establishing that other causes or iron deficiency anemia do not exist.

Additionally, we are not convinced that on this record complaint counsel has established that, in cases of iron deficiency anemia due to bleeding, the bleeding is always caused by a disease or disorder which normally progresses from a less serious to a more serious state. For example, certain of the testimony quoted by the examiner, and other evidence of record, indicate that hemorrhoids are a frequent cause of iron deficiency anemia. However, we do not believe that the evidence is sufficient to support a finding that hemorrhoids is a serious disease or disorder which normally progresses.

We also note that at a prehearing conference, complaint counsel stated that the masking charge does not apply to a situation in which the person has a sign or symptom of the underlying disease other than the tiredness symptoms. However, it appears from this record that most of the serious diseases which cause bleeding, cited by the examiner, have additional symptoms which Geritol will not relieve. We cannot conclude from this record that any relief from tiredness symptoms provided by Geritol will cause a person with additional symptoms to delay treatment of the disease.

Under the foregoing circumstances, respondents' appeal is granted in part and denied in part. As modified in accordance with this opinion, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

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## VIDEO

MS OF BERT PARKS. GERITOL  
DESK UNIT NOT IN VIEW.

FILM CLIP #SF-3 :14  
(WINTER SCENE)  
(USE ONLY :10)

CUT BACK TO BERT PARKS.

DOLLY BACK TO REVEAL  
UNIT.

PICKS UP BOTTLE OF GERITOL  
TABLETS.

DOLLY IN TO LOSE UNIT

HOLDS UP BOTTLE OF GERI-  
TOL LIQUID

DISSOLVE BOTT SUPER: CARD  
#G-548R3 "7 VITAMINS +"  
(PULL +)

UNDERCUT BOTT SUPER:  
CARD #G-164R3  
"TWICE THE IRON IN A POUND  
OF CALVES' LIVER"

LOSE SUPER.

CUT TO CARD #G-574R  
DISPLAY OF PRODUCT WITH  
MESSAGE "FEEL STRONGER  
FAST"

## AUDIO

*BERT PARKS:* Well now, has the  
weather been like this in your part  
of the country? Snowy \* \* \* blus-  
tery \* \* \* cold?

*SOUND: WIND HOWLING:*

As a result, have you been in bed  
with a cold, flu, fever? After such an  
illness, if you suffer from iron-poor  
blood you may find that recovery is  
slow. To get back your normal  
strength fast, when this is your  
problem, you should build up iron-  
poor blood. Now, if you've been tak-  
ing vitamins and still feel tired—  
remember, vitamins *alone* can't build  
up iron-poor blood.

But GERITOL *can!* Because

just 2 GERITOL tablets \* \* \*

or 2 tablespoons of GERITOL liquid  
\* \* \*

contain 7 vitamins \* \* \* plus \* \* \*

*twice* the iron in a pound of calves'  
liver.

GERITOL begins to strengthen iron-  
poor blood in twenty-four hours.  
Check with your doctor. And if you  
feel rundown because of iron-poor  
blood \* \* \* especially after a fever,  
flu or virus \* \* \* take GERITOL  
every day.

You'll *feel stronger fast* \* \* \* in  
just seven days \* \* \* or your money  
back from the GERITOL folks.

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## VIDEO

MS OF ART LINKLETTER IN COMMERCIAL AREA.

HOLDS UP BOTTLE OF GERITOL TABLETS AND

PICKS UP BOTTLE OF GERITOL LIQUID. POINTS TO IT.

DISSOLVE BOTTOM SUPER: CARD #G-548R3 "7 VITAMINS +" (PULL +)

UNDERCUT BOTTOM SUPER: CARD #G-164R3 "TWICE THE IRON IN A POUND OF CALVES' LIVER"

LOSE SUPER

TCU OF LINKLETTER. GESTURES WITH BOTTLES. CLOSE AS POSSIBLE

BOTTOM SUPER: CARD #G-283 "FEEL STRONGER FAST"

UNDERCUT BOTTOM SUPER #SP-201 "SAVE \$1.00 BUY ECONOMY SIZE"

## VIDEO

## FILM

1. MEDIUM SHOT, MOTHER IN BOYS' ROOM STRAIGHTENING UP ROOM.

## AUDIO

*ART LINKLETTER:* The other day I heard a lady say, "I feel so tired every night, a team of horses couldn't drag me out!" If you feel too tired even to go out and have a little fun \* \* \* that worn-out feeling may be due to iron-poor blood. And if you've been taking vitamins, yet *still* feel tired, remember, *vitamins alone* can't build up iron-poor blood. But GERITOL can! Because \* \* \*

just 2 GERITOL tablets \* \* \*

or 2 tablespoons of GERITOL liquid \* \* \*

contain 7 vitamins \* \* \* *plus*

*twice* the iron in a pound of calves' liver.

In only one day GERITOL-iron is in your bloodstream carrying *strength* and *energy* to every part of your body. Check with your doctor \* \* \* and if you've been feeling worn-out because of iron-poor blood \* \* \* and especially after a cold, the flu or sore throat \* \* \* take GERITOL *every day*.

*Feel stronger fast* \* \* \* in just 7 days or your money back from the GERITOL folks. And to save one dollar \* \* \* buy the economy size.

## AUDIO

1. *LUCILLE STREAT: (REFLECTIVE VOICE OVER)* I feel so tired and run-down lately.



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## VIDEO

2. MOVE INTO: CLOSE SHOT, AS WOMAN STOPS TIDYING, PUTS HAND TO HEAD, EXHAUSTED.
3. ANIMATE ON GERITOL RECTANGLE AROUND HER HEAD. POP ON WORDS, "TIRED BLOOD".
4. CROSS-DISSOLVE TO GERITOL LABEL WITHIN OUTLINE.
5. DISSOLVE IN BOTTLE BEHIND LABEL.
6. SAME WOMAN AND HER HUSBAND COMING IN FROM GARDEN, CARRYING FLOWERS.
7. MOVE IN TO CU — SHE'S HAPPY, ENERGETIC AND VIBRANT.
8. 2 GERITOL BOTTLES. WIPE ON "LIQUID" AND THEN "TABLETS". DISSOLVE OFF SUPER AND WIPE ON:
9. "FEEL STRONGER FAST"

## AUDIO

2. I wonder what the trouble is?  
*BOB SHEPARD: (VOICE OVER) Your trouble may be due to iron deficiency anemia.*
3. We call it \* \* \* *TIRED BLOOD.*
4. Check with your doctor. And to  
*feel stronger fast*
5. \* \* \* take GERITOL \* \* \* the  
*high potency tonic.*
6. In only one day GERITOL iron  
is in your bloodstream carrying  
strength and energy \* \* \*
7. \* \* \* to every part of your body.
8. Take GERITOL \* \* \* liquid or  
tablets \* \* \* *every day.*
9. *Feel stronger fast \* \* \* within  
seven days \* \* \* or money back!*

## FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the initial decision and upon briefs in support of and in opposition to said appeal; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondents' appeal should be granted in part and denied in part, and having further determined that the initial decision should be modified in certain respects:

*It is ordered,* That the hearing examiner's findings of fact numbered 96 through 131 in the initial decision, be, and they hereby are, rejected.

*It is further ordered,* That the initial decision be modified by striking the order to cease and desist and substituting therefor the following:

*It is ordered,* That respondents, The J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, Inc., a cor-

poration, 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 Geritol Liquid or the preparation designated Geritol Tablets, 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:

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 tiredness, loss of strength, run-down feeling, nervousness or irritability;

(b) Which represents directly or by implication that the preparation is a generally effective remedy for tiredness, loss of strength, run-down feeling, nervousness or irritability;

(c) Which represents directly or by implication that the preparation is an effective remedy for tiredness, loss of strength, run-down feeling, nervousness or irritability 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 tiredness, loss of strength, run-down feeling, nervousness or irritability, 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 iron deficiency or iron deficiency anemia; and (2) for such persons the preparation will be of no benefit;

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(e) Which represents directly or by implication that tiredness, loss of strength, run-down feeling, nervousness or irritability are generally reliable indications of iron deficiency or iron deficiency anemia;

(f) Which represents directly or by implication that the presence of iron deficiency or iron deficiency anemia can be self diagnosed or that either can generally be determined without a medical test conducted by or under the supervision of a physician;

(g) 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;

(h) Which represents directly or by implication that the use of such preparation will promote convalescence from a cold, flu, fever, virus infection, sore throat or any other winter illnesses;

(i) Which represent 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.

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 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 the affirmative requirements of, paragraph 1 hereof.

*It is further ordered,* That the hearing examiner's initial decision, as modified and as supplemented by the findings and conclusions embodied in the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents 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 the order to cease and desist set forth herein.

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IN THE MATTER OF

H. BERMAN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

*Docket C-999. Complaint, Sept. 28, 1965—Decision, Sept. 28, 1965*

Consent order requiring Chicago, Ill., custom manufacturer-retailer of fur products to cease misbranding and falsely invoicing its fur products in violation of the Fur Products Labeling Act.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that H. Berman, Inc., a corporation, and Sara Berman, and Marvin Berman individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 H. Berman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Individual respondents Sara Berman and Marvin Berman are officers of the corporate respondent and participate in the formulation, direction and control of the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to.

Respondents are custom manufacturer-retailers of fur products. Respondents' main office and place of business is at 7 West Madison Street, Chicago, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the

terms "commerce," "fur" and "fur product" are defined in the fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(1) To show the true animal name of the fur used in the fur product.

(2) To disclose that the fur used in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(1) The term "Broadtail Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(2) Information required under Section 4(2) of the Fur Products Labeling Act was set forth in handwriting, in violation of Rule 29(b) of said Rules and Regulations.

(3) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(4) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Broadtail Lamb" was not set forth on invoices

in the manner required by law in violation of Rule 8 of said Rules and Regulations.

(b) The term "Natural" was not used on invoices to describe the fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(c) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act and the Fur Products Labeling Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent H. Berman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 7 West Madison Street, Chicago, Illinois.

Respondents Sara Berman and Marvin Berman are officers of

said corporation and their 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 H. Berman, Inc., a corporation, and its officers, and Sara Berman, and Marvin Berman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding of such products by:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "Broadtail Lamb" on labels in the manner required where an election is made to use that term instead of the word "Lamb."

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

4. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

5. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information re-

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quired to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Failing to set forth the term "Broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Failing to set forth on invoices the item number or mark assigned to fur products.

*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

## STATE CREDIT CONTROL BUREAU, INC., ET AL.

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

*Docket C-1000. Complaint, Oct. 8, 1965—Decision, Oct. 8, 1965*

Consent order requiring a St. Louis, Mo., seller and remailer of debt collection forms to cease misleading debtors into believing a State agency is involved in collecting their overdue accounts.

## 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 State Credit Control Bureau, Inc., a corporation, and Stephen W. Conger, Thomas W. Collins, and Gertrude R. Conger, individually and as officers 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 State Credit Control Bureau, Inc., is



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a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 450 West Hanley Industrial Court, St. Louis, Missouri.

Respondents Stephen W. Conger, Thomas W. Collins, and Gertrude R. Conger, are officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 advertising, offering for sale, sale and distribution of collection forms to dealers for resale to businessmen and to businessmen directly. Respondents are also engaged in the operation of a remailing service with respect to such forms.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said forms, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' forms are designed and intended to be used, and are used, by businessmen and others to whom they are sold for the purpose of inducing the payment of alleged delinquent accounts, with the aid and assistance of the respondents as hereinafter set forth.

Respondents' forms are of two types: (1) those which are designed to accompany a statement of account made by the creditor under his own name; and (2) those which are designed to be inserted in envelopes provided by the respondents, which envelopes show a return address in the capital city of one of the states of the United States.

Among the forms of the first type is one which contains the following statement: "We MUST hear from you within Ten Days or this account will be turned over to—STATE CREDIT CONTROL BUREAU."

All of the forms of the second type bear the letterhead of "State Credit Control Bureau" together with a post office box number in the capital city of one of the States of the United States. A user of this type of form fills in the appropriate data in the spaces provided, including the name and address of the alleged debtor

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or other addressee, together with the amount of the alleged indebtedness, and sends the completed form to respondents' agent in the capital city of the appropriate state. Respondents' agent then mails the form from that location.

Among and illustrative of respondents' forms, although not all inclusive thereof, are the following:

## STATE CREDIT CONTROL BUREAU

P.O. Box 2064, Springfield, Illinois

TO:	Date .....
	Creditor .....
.....	Address .....
Name	.....
.....	Address .....
Address	Amount Claimed .....
.....	Collection Charges .....
City	State

A routine examination of delinquent accounts is being made for the above named creditor for the consideration of legal action in effecting settlements.

An unpaid account in the above amount, which is stated to be just and legally due, appears against you.

Since this may be an oversight on your part, we are sending you this notice Ten (10) Days in advance of any proceedings to afford you an opportunity to settle *with your creditor*.

This account must be paid or arrangements made for payment within the prescribed time limit. Contact your creditor immediately to avoid further action.

Yours truly,

Oliver F. Brimmer  
State Collection Officer

Referred to file of County Collection Officer

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STATE CREDIT CONTROL BUREAU  
P.O. Box 2064, Springfield, Illinois

TO:

Date .....

Creditor .....

Address .....

Amount Claimed .....

.....  
Name

Collection Charges .....

.....  
Address

Date Serving Writ .....

Writ Returnable .....

.....  
City State

Name of Court Judge .....

You have been advised on several occasions to contact your creditor for settlement of the above account.

Since we have had no word that this has been done, we have advised your creditor to file suit after Five (5) Days involving the taking of judgment, levy and garnishment.

You should therefore assert yourself immediately if you feel you have a legitimate reason for not paying this account.

Do NOT contact this office. We cannot, in the length of time involved, stop further action. To avoid expensive litigation you *must make arrangements with your creditor* immediately.

Yours truly,

Oliver F. Brimmer  
State Collection Officer

Referred to file of County Collection Officer

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, the respondents represent, and place in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that:

(a) A request for payment or other request regarding an allegedly delinquent account is being made by an agency of state government.

(b) A request for payment or other request regarding an allegedly delinquent account originates with a party other than the creditor.

(c) An allegedly delinquent account has been or is about to be referred to "State Credit Control Bureau" for collection.

(d) Legal action with respect to an allegedly delinquent account has been or is about to be initiated.

PAR. 6. In truth and in fact:

(a) The request for payment or other request regarding an allegedly delinquent account is not being made by an agency of state, federal or local government.

(b) The request for payment or other request regarding an allegedly delinquent account originates with the creditor.

(c) The allegedly delinquent account has not been, nor is it about to be referred to "State Credit Control Bureau" for collection.

(d) Legal action with respect to the allegedly delinquent account has not been, nor in many cases is it about to be, initiated.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, 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 Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its considera-

tion and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent State Credit Control Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 450 West Hanley Industrial Court, in the city of St. Louis, State of Missouri.

Respondents Stephen W. Conger, Thomas W. Collins and Gertrude R. Conger are officers of the corporation and their address is the same as that of the 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 State Credit Control Bureau, Inc., a corporation, and its officers, and Stephen W. Conger, Thomas W. Collins and Gertrude R. Conger, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the collection of, or the attempt to collect, accounts, or with the solicitation of information concerning debts or debtors, or with the offering for sale, sale or distribution of forms, or other materials, for use in the collection of, or the attempt to collect, accounts, or in the solicitation of information concerning debts or debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "State Credit Control Bureau," "State Collection Officer," "County Collection Officer," or any other

words of similar import or meaning to refer to respondents' business or any person connected therewith.

2. Representing, or placing in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that:

a. Any communication with respect to an allegedly delinquent account is being made by, through, or in connection with an agency of government, whether state, federal, or local;

b. Any communication with respect to an allegedly delinquent account originates with any party other than the true originator thereof;

c. An allegedly delinquent account has been, or is about to be, or may be referred to any party for any purpose: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that at the time the representation was made (1) a bona fide referral had been effected, or was about to be effected, or was being seriously considered, as represented, and (2) the true nature of the referral was clearly and completely disclosed;

d. Legal action with respect to an allegedly delinquent account has been, or is about to be, or may be initiated: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that at the time the representation was made (1) legal action had been initiated, or was about to be initiated, or was being seriously considered, as represented, and (2) the true nature of the legal action was clearly and completely disclosed.

*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

ALLIED STORES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

*Docket C-1001. Complaint, Oct. 8, 1965—Decision, Oct. 8, 1965*

Consent order requiring the Nation's second largest conventional department store chain with headquarters in New York City to divest within 1 year

## Complaint

a department store located in a San Antonio, Tex., suburb to a responsible purchaser approved by the Commission, and refrain from making any horizontal mergers for 10 years without prior Commission approval.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, Allied Stores Corporation, has violated the provisions of Section 7 of the Clayton Act and Section 5(a)(1), of the Federal Trade Commission Act (15 U.S.C. §§ 18, 45(a)(1)), through its acquisition of Wolff & Marx, Inc., and that a proceeding in respect thereof would be to the interest of the public, issues this complaint, stating its charges as follows:

## I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Apparel" includes clothing (excluding footwear) and related articles and accessories for personal wear and adornment, for men, women, and children.

(b) "Household linens and dry goods" includes curtains, draperies, bed sheets, blankets, linens, piece goods, patterns, laces, trimmings, notions, closet accessories, blinds, and window shades.

(c) "Department stores" are retail stores normally employing 25 or more people and engaged in selling some items in each of the following lines of merchandise:

(i) Furniture, home furnishings, appliances, radio and TV sets;

(ii) A general line of apparel; and

(iii) Household linens and dry goods.

An establishment with annual total sales of less than \$5 million is not classified as a "department store" if: (a) sales of any one of these groups is greater than 80 percent of total sales, or (b) sales of groups (ii) and (iii) combined represent less than 20 percent of total sales. An establishment with annual total sales of \$5 million or more is classified as a "department store" even if sales of one of the groups described above is more than 80 percent of total sales, provided that the combined annual sales of the other two groups is \$500,000 or more. This definition corresponds to Bureau of Census Industry Classification No. 531, as defined in the 1963 Census of Business.

(d) "General Merchandise, Apparel, Furniture stores," hereinafter referred to as "GMAF stores," include retail establishments in the following categories:

(i) Department stores;

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(ii) Other stores primarily engaged in the sale of apparel;

(iii) Limited price variety stores—establishments primarily selling a variety of merchandise at low and popular price ranges, such as stationery, gift items, accessories, toilet articles, light hardware, toys, housewares, confectionery; these establishments frequently are known as “5 and 10¢ stores,” although they usually sell merchandise outside these price ranges; these stores comprise Bureau of Census Industry Classification No. 533;

(iv) Miscellaneous general merchandise stores—retail stores primarily selling household linens and dry goods and/or a combination of apparel, hardware, homewares or home furnishings; stores which meet the criteria for department stores except as to number of employees are included here; these stores comprise Bureau of Census Industry Classification No. 539;

(v) Furniture, home furnishings, and equipment stores—retail stores primarily selling merchandise used in furnishing the home, such as furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances, including radio and TV sets; such stores comprise Bureau of Census Major Industry Group No. 57.

GMAF stores, as defined herein, correspond to all retail store groups under Bureau of Census Major Industry Groups No. 53, 56, and 57.

(e) The “San Antonio Standard Metropolitan Statistical Area,” is comprised of Bexar and Guadalupe Counties, Texas.

## II. ALLIED AND JOSKE'S

2. Allied Stores Corporation, named respondent herein, and hereinafter referred to as “Allied,” is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 401 Fifth Avenue, New York, New York 10018.

3. Allied is the second largest among conventional department store chains in the United States, *i.e.*, those including large, downtown, traditional-type department stores carrying a wide variety of major brand items and offering a wide variety of customer services; it is the nation's fifth largest department store chain. Its approximately 100 stores, in over 80 cities, with over 19 million square feet of floor space, annually sell to the members of the consuming public approximately \$830 million worth of wearing apparel and accessories, household linens and dry goods, home furnishings, housewares, appliances, and other merchandise.

4. Each of Allied's stores is a leading retail institution in the



community in which it is located—and the stores include such major department stores as Stern's (New York, New York), Jordan Marsh (Boston, Massachusetts, and Miami, Florida), Block's (Indianapolis, Indiana), Bon Marche (Seattle, Washington), Joske's (Houston and San Antonio, Texas), and Titcher's (Dallas, Texas).

5. Allied ranks thirteenth in sales among all United States retailing firms and ranks 74th in sales among all United States retailing and industrial firms. The retained earnings of the company exceed \$120 million and its total assets (including those of its unconsolidated real estate subsidiary) are approximately \$530 million. Allied for many years has enjoyed a substantial cash flow and ready access to institutional funds and other sources of capital. During 1963, Allied had available to it funds from net earnings of \$13,600,000, proceeds from long-term promissory notes placed with institutional investors of \$50,000,000, and cash flow generated by depreciation and amortization of \$7,800,000. Allied has advised its stockholders that it issued the aforesaid notes in recognition of the company's "need for further suburban growth" and that the funds would provide "an additional \$30 million for expansion financing."

6. Allied does business in San Antonio, Texas, under the name "Joske Bros. Co.," hereinafter referred to as "Joske's." Joske's is a well-established, highly respected, profitable retail institution. Its 1963 total sales exceeded \$27 million. Joske's is the second largest department store operation in San Antonio, and it ranks second among all San Antonio GMAF stores, exceeded in sales volume only by Sears, Roebuck & Co. Among San Antonio sellers of apparel, Joske's ranks first, with sales nearly twice those of the next ranking firm; it is also first in point of household linens and dry goods sales. Joske's is by far the principal advertiser in San Antonio; in 1963 it accounted for 6.6 million lines, more than twice the advertising lineage of second ranking Sears.

7. Joske's operates two department stores in the San Antonio Standard Metropolitan Statistical Area, neither of which is located in a suburban center. The principal store, with about 550,000 square feet of floor space, is located in the downtown business district of San Antonio. It is the principal department store in the city, and its annual sales volume is approximately \$25 million. The only branch store that Joske's now operates is located in Las Palmas, a lower income section of the city, and has about 80,000 square feet of floor space and annual sales of about \$2.4 million.

8. Allied is extensively engaged in the shipment and in the pur-

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chase for resale of goods across State lines. Allied is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

## III. WOLFF &amp; MARX

9. Wolff & Marx, Inc., hereinafter referred to as "Wolff & Marx," was a corporation organized and existing under the laws of the State of Texas, with its principal office located at 210 West Houston Street, San Antonio, Texas.

10. Wolff & Marx was the fourth-ranking department store company and the sixth-ranking GMAF store in San Antonio. Wolff & Marx had grown substantially in recent years; its annual sales had more than doubled over the past seven years, from \$3.4 million in 1956 to \$7.4 million in 1963. Wolff & Marx was a financially sound, locally owned organization, with total assets of more than \$4.7 million and total stockholder equity in excess of \$1 million. Wolff & Marx had enjoyed adequate access to local sources of working and expansion capital.

11. Wolff & Marx operated an established downtown department store at 210 West Houston Street in San Antonio, Texas, and a new suburban department store at the North Star Mall Shopping Center in San Antonio. The 1963 sales for the two stores amounted to \$3.6 million and \$3.8 million, respectively.

12. The new suburban store is located in a section of higher income population, and accordingly it is a highly profitable and desirable operation. In 1963, the suburban store contributed the overwhelming portion of Wolff & Marx' profits. Currently, the suburban store has 82,000 square feet of floor space, 20,000 square feet having been added at the close of 1963.

13. Wolff & Marx was extensively engaged in the purchase for resale of goods across State lines. Wolff & Marx was engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

## IV. NATURE OF TRADE AND COMMERCE

## A. Generally

14. GMAF stores comprise the second largest group of retailers in the United States, with a sales volume of approximately \$55 billion in 1963, and they are exceeded in sales only by retail food stores. GMAF store sales represent approximately 23% of all retail sales in the United States.

## Complaint

15. Within the GMAF store group, department stores constitute the largest component, accounting for 37% of GMAF store sales. Department stores, moreover, are the fourth most important group of retail stores in the United States, exceeded in sales volume only by food stores, automotive dealers and stores, and gasoline stations. Their national sales volume of approximately \$20.5 billion in 1963 represented over 8% of all retail sales in the country. Department stores account for approximately 35% of apparel sales, 43% of women's and children's apparel sales, 46% of household linens and dry goods sales.

16. Department stores are recognized by the consuming public and in the trade as a distinct line of business:

(a) They are particularly favored by the public because they sell a cluster of commodities and services not duplicated by other retailers. They offer the opportunity to satisfy under one roof shopping needs for a wide variety of merchandise, including apparel, household linens and dry goods, furniture, appliances, and other housewares. This package of products is combined with an array of services such as the extension of credit, delivery of goods, the sending of goods on approval with liberal return privileges, fashion shows, and a number of other free services. Moreover, frequently they enjoy a favorable image of stability and respectability attributable, at least in part, to their size and importance as retailers in the communities which they serve.

(b) In the last connection, department stores enjoy an image which derives at least in part, from the fact that they are the major advertisers in the communities which they serve, usually advertising more than all other GMAF stores combined—as is the case in San Antonio, where the four leading department store advertisers account for more than half of GMAF store advertising lineage. As a result of department stores' enormous advertising expenditure, they frequently receive preferred treatment from newspapers in the form of free publicity.

(c) Statistics on department store sales and other economic data relating to department stores, institutionally classified as such, are regularly gathered and published by the United States Bureau of Census, the various Federal Reserve Banks, various State agencies, the National Retail Merchants Association, universities, and other trade publications and organizations.

(d) Department stores differ from other GMAF stores in that they carry far more private label merchandise. For example, Allied carries a wide variety of private label apparel, household linens and

dry good, appliances, and home furnishings. Department stores are in a particularly advantageous position to obtain private label merchandise because of their enormous volume of purchases.

#### B. The San Antonio Market

17. Within recent years, several new, important suburban shopping centers have opened in the San Antonio Standard Metropolitan Statistical Area, and the pattern of the San Antonio retail market has shifted toward increasing sales through store locations in such centers as compared with downtown stores. Heretofore, Joske's has not participated in the movement of retail store locations to the suburbs, and it has begun to feel acutely the necessity for a suburban location in order for it to preserve its share of the rapidly expanding San Antonio market. It views the acquisition of Wolff & Marx as an economically advantageous method of entering the suburban market, one more financially attractive to it than building its own suburban store. Allied's president has declared that the Wolff & Marx suburban store was "the prime location" for a Joske's branch, "if Joske's were to take its proper place in the suburban market."

18. The Wolff & Marx downtown store is located in the San Antonio central business district, not very far from the downtown Joske's store. The sales volume of this store, like that of other downtown department stores in many sections of the United States, has declined in recent years. Nevertheless, the store still contributes substantially toward Wolff & Marx' overhead and general expenses. In its most recent annual report, Wolff & Marx stated: "Although the lease [on the downtown store] expires July 31, 1967, it is the intention of management to exercise the option available, extending the lease an additional ten years." Allied has informed the staff of the Commission, however, that it is its intention not to renew the lease and that it will "liquidate the downtown store" after consummation of the merger.

19. Department store sales in the San Antonio Standard Metropolitan Statistical Area totalled approximately \$105 million in 1963, while GMAF store sales totalled approximately \$226 million. San Antonio Standard Metropolitan Statistical Area 1963 apparel sales were approximately \$100 million; 1963 dry goods and household linen sales amounted to approximately \$11 million.

Allied's 1963 total sales through its two San Antonio Joske's stores were approximately \$27 million, of which \$12.2 million was in apparel and \$2.3 million in household linen and dry goods. Wolff & Marx' two stores accounted for \$7.4 million in total sales, \$5.1

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## Complaint

million in apparel, and \$770,000 in household linen and dry goods. These sales represent the following shares of 1963 San Antonio sales:

	<i>Joske's</i>	<i>Wolff &amp; Marx</i>	<i>Combined</i>
Department stores .....	25%	7%	33%
GMAF stores .....	12%	3%	15%
Apparel .....	12%	5%	17%
Household linen and dry goods .....	21%	7%	28%

Prior to the merger, Joske's ranked second among department and GMAF stores, and first among sellers of apparel and sellers of household linen and dry goods. After the merger Joske's will rank first in each category—and in apparel the combined share of the merging stores will be about 2½ times the market share of the second ranking seller.

A significant degree of concentration already exists in the San Antonio market. The two leading department store companies presently account for 54% of department store sales. The addition of Wolff & Marx' share to Joske's raises the percentage of sales commanded by the top two department store companies in San Antonio to nearly two-thirds of department store sales. Similar concentration exists among GMAF stores as a group, the top four presently accounting for more than a third and the top eight presently accounting for nearly half of GMAF store sales. In the sale of apparel, the four leading sellers presently account for nearly a third of the market, while the four leading sellers of household linen and dry goods account for approximately one-half of San Antonio sales:

## V. VIOLATION CHARGED

20. After extensive negotiations during 1964, the directors of Allied and the principal stockholders of Wolff & Marx entered into an agreement on November 25, 1964, for Allied to acquire for cash the outstanding shares of stock of Wolff & Marx. According to the terms and conditions of Allied's offer to the Wolff & Marx stockholders, Allied agreed to pay \$11 in cash for each share of Wolff & Marx common stock, or approximately \$1,200,000 for the entire company.

By January 11, 1965, the owners of more than 95% of the outstanding shares of Wolff & Marx common stock had deposited their stock with Allied's escrow agent, and accordingly the purchase offer was declared consummated. Shortly thereafter, Allied succeeded to the ownership of the assets of Wolff & Marx.

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21. The effect of the acquisition of Wolff & Marx by Allied, may be substantially to lessen competition or to tend to create a monopoly in the department store industry, the GMAF store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise sold by department stores and other retailers, throughout the United States or certain sections thereof, in violation of Section 7 of the Clayton Act, as more fully described below in Paragraph 23.

22. The combination by which Allied and Wolff & Marx undertook to merge Wolff & Marx into Allied is in unreasonable restraint of trade and commerce in the department store industry, the GMAF store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise by department stores and other retailers, throughout the United States or certain sections thereof, in violation of Section 5 of the Federal Trade Commission Act, as more fully described below in Paragraph 23.

## VI. EFFECTS OF VIOLATIONS CHARGED

23. The effects of the foregoing violations have been and may be the following, among others:

(a) Actual or potential competition between Allied and Wolff & Marx in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other lines of merchandise distributed by department stores has been eliminated, prevented, or lessened in the San Antonio Standard Metropolitan Statistical Area;

(b) Allied, a major competitive factor in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area, has eliminated Wolff & Marx, another major competitive factor in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area;

(c) Concentration in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other lines of merchandise distributed by department stores, will be preserved and increased in the San Antonio Standard Metropolitan Statistical Area;

(d) The restraining influence upon non-competitive behavior in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other

lines of merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area, which existed by reason of the independent operation of Wolff & Marx, has been eliminated;

(e) The monopsonistic power of Allied may be substantially increased in the San Antonio Standard Metropolitan Statistical Area, thus depriving other merchants of access to sources of supply and resulting in a substantial lessening of competition in the distribution of apparel and other merchandise sold by GMAF stores.

(f) The members of the consuming public, in the San Antonio Standard Metropolitan Statistical Area, will be denied the benefits of free and unrestricted competition in the department store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise distributed by GMAF stores.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Allied Stores Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 401 Fifth Avenue, New York, New York, 10018.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

Decision and Order

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## ORDER

## I

*It is ordered,* That respondent, Allied Stores Corporation, hereinafter referred to as "Allied," absolutely and in good faith, divest the retail store situated at the North Star Mall Shopping Center in San Antonio, Texas, acquired by Allied as the result of its acquisition of Wolff & Marx, Inc. Such divestiture shall include all leases, warehousing facilities, inventories, the trade name "Wolff & Marx," trademarks, and goodwill, together with all additions thereto and replacements thereof. Such divestiture shall be to a responsible purchaser approved by the Federal Trade Commission, who shall preserve said store as a going concern and fully effective competitor in the lines of commerce in which it was engaged prior to the acquisition, and said divestiture shall take duly into account the interest of North Star Mall, Inc., and of the other merchants in the North Star Mall Shopping Center in the maintenance of the drawing power of the store and the effective operation of the Shopping Center as an integrated merchandising unit.

## II

*It is further ordered,* That Allied begin to make good faith efforts to divest the above said assets promptly after the effective date of this Order. It shall continue such efforts to the end that the divestiture thereof be effected within one (1) year. If divestiture of said store to a satisfactory purchaser shall not have been accomplished within the specified one (1) year period, or any extensions thereof, the Commission will give respondent notice and an opportunity to be heard before the Commission issues any further order or orders which the Commission may deem appropriate.

## III

*It is further ordered,* That, in the aforesaid divestiture, Allied not sell or transfer, directly or indirectly, any of said assets to anyone who is at the time of divestiture an officer, director, employee, or agent of, or under the control or direction of, Allied or any of its subsidiaries or affiliates, or to any person who owns or controls more than one (1) percent of the outstanding shares of common stock of Allied or any of its subsidiaries or affiliates.

## IV

*It is further ordered,* That, pending divestiture, Allied not make any changes in, nor fail to take appropriate steps to preserve, any



of the aforesaid assets if such action or inaction would impair their capacity for the retail sale or distribution of apparel, household linens and dry goods, or other merchandise, or their market value.

## V

*It is further ordered,* That, for ten (10) years from the effective date of this Order, Allied cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any part of the stock or assets of any firm engaged in the department store business or GMAF store business in any SMSA in the United States in which Allied then operates a department store or GMAF store.

## VI

*It is further ordered,* That, within sixty (60) days after the effective date of this Order, within every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through IV of this Order, and within every year thereafter until it has fully complied with the provisions of Paragraph V of this Order, Allied submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the assets to be divested under this Order, the identity of all such potential purchasers, copies of all written communications to and from such potential purchasers, and a statement as will disclose the identity of all department store or GMAF store businesses, any part of the stock or assets of which Allied has acquired, contracted to acquire, or offered to acquire since the preparation of the prior compliance report, together with the location of each such store.

## IN THE MATTER OF

## MORRIS B. SACHS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

*Docket C-1002. Complaint, Oct. 14, 1965—Decision, Oct. 14, 1965*

Consent order requiring Chicago, Ill., retailers of fur products, to cease misbranding, falsely invoicing, and deceptively advertising their fur products in violation of the Fur Products Labeling Act.

## Complaint

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## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Morris B. Sachs, Inc., a corporation, and Morris B. Sachs, Jr. and Benjamin Schwab, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Morris B. Sachs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondents Morris B. Sachs, Jr., and Benjamin Schwab are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 6638 South Halsted Street, Chicago, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur product, contained representations, either directly or by implication through comparative prices under the designations of "Reg" and "Now," that the prices of such fur products were reduced from respondents' former prices in recent regular course of business and the amount of such purported reduction constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former

prices were false and deceptive in that they were not the actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business. The said fur products were not reduced in prices as represented, nor were savings afforded purchasers of respondents' fur products as represented. The alleged former prices were the prices at which the products had been offered to the public at a remote period in the past and such prices underwent intermediate mark downs at substantial periods of time before the products were offered to the public at the "Reg" and "Now" prices.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered in invoices which failed to show the true animal name of the fur used in the fur product.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Chicago Tribune, a newspaper published in the city of Chicago, State of Illinois.

By means of the aforesaid advertisements and others of similar

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import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that certain of said fur products were falsely and deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 7. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder by representing, directly or by implication, through statements appearing in newspapers such as "Mink Stoles — reg. \$589 — now \$399," that the prices of such fur products were reduced from the actual bona fide prices at which the respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the amount of such purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact the alleged former prices were fictitious in that they were not reduced from the actual bona fide prices at which respondents had offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' fur products as represented.

PAR. 8. Respondents falsely and deceptively advertised fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder by affixing labels thereto which represented either directly or by implication through comparative prices under the designations "Reg" and "Now" that the prices of such fur products were reduced from respondents' former prices in the recent regular course of business and the amount of such purported reduction constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were false and deceptive in that they were not the actual, bona fide prices at which the respondents offered the products to the public on a regular basis for

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a reasonably substantial period of time in the recent regular course of business. The said fur products were not reduced in prices as represented, nor were savings afforded purchasers of respondents' fur products as represented. The alleged former prices were the prices at which the products had been offered to the public at a remote period in the past and such prices underwent intermediate mark downs at substantial periods of time before the products were offered to the public at the "Reg" and "Now" prices.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

(b) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 10. In advertising fur products for sale as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition under 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 Fur Products Labeling 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 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 had been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Morris B. Sachs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 6638 South Halsted Street, Chicago, Illinois.

Respondents Morris B. Sachs, Jr., and Benjamin Schwab are officers of the corporate respondent and their address is the same as that of the corporate respondent.

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 Morris B. Sachs, Inc., a corporation, and its officers, and Morris B. Sachs, Jr., and Benjamin Schwab, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or in the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation and distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Using the word "Reg," or words of similar import, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale

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in good faith by the respondents in the recent regular course of their business, or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondents' fur products.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set forth the term "natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist directly or indirectly in the sale, or offering for sale of any fur product, and which:

1. Falsely or deceptively identifies any such product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

2. Uses the word "Reg," or words of similar import, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondents in the recent regular course of their business, or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

3. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

4. Fails to set forth the term "natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and

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Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

5. Fails to set forth all parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

D. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

*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.

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IN THE MATTER OF

FURR'S, INC.

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

*Docket 8581. Complaint, June 28, 1963—Decision, Oct. 20, 1965*

Order dismissing the complaint and closing the proceeding against a large Southwestern grocery chain with headquarters in Lubbock, Texas, which had allegedly solicited payments from three milk suppliers in connection with a promotional advertising scheme in violation of Section 5 of the Federal Trade Commission Act on the grounds that the particular practice complained of had stopped and that an order is not necessary in the public interest to insure against future violations.

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 Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows: