

II.

It is further ordered, That respondents Qualitone Industries, Inc., a corporation, and its officers, and Samuel Karns and Dorothy Karns, 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 offering for sale, sale or distribution of phonograph needles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "sapphire" or "jewel" or any other word or words denoting precious stones, in designating or describing the points or tips of phonograph needles made of synthetic material of the kind so designated, without clearly stating in immediate connection with such word or words, that such points or tips are synthetic.

2. Placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out in Section II herein.

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.

By the Commission, Commissioner Elman not participating.

 IN THE MATTER OF

COVE VITAMIN AND PHARMACEUTICAL, INC., ET AL.

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

Docket C-572. Complaint, Sept. 6, 1963—Decision, Sept. 6, 1963

Consent order requiring two associated corporate distributors of safflower oil capsules in Glen Cove, N. Y., to cease making a variety of false representations in a book "Calories Don't Count", which they promoted jointly with the publishers, and in newspaper and magazine advertising, with regard to the importance of polyunsaturated fats in the diet and their effectiveness in reducing etc., as in the order below in detail set forth.

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 Cove Vitamin and Pharmaceutical, Inc., a corporation, and Harry Bobley, Edward Bobley and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and Kenneth Beirn, individually and 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 Cove Vitamin and Pharmaceutical, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Its address is Bobley Building, Glen Cove, New York.

Respondents Harry Bobley, Edward Bobley and Peter M. Bobley are officers of respondent Cove Vitamin Pharmaceutical, Inc. They each participate in the formulation, direction and control of the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as respondent Cove Vitamin and Pharmaceutical, Inc.

Respondent CDC Pharmaceutical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York. This respondent has offices and its principal place of business at Bobley Building, Glen Cove, New York. It is a subsidiary of Cove Vitamin and Pharmaceutical, Inc.

Respondent Kenneth Beirn is an individual whose address is 270 Park Avenue, city of New York, State of New York.

PAR. 2. Respondents Cove Vitamin and Pharmaceutical, Inc., CDC Pharmaceutical Corporation, Harry Bobley, Edward Bobley and Peter M. Bobley have been engaged in the promotion, sale and distribution of safflower oil capsules designated "CDC Capsules" and have participated in the acts and practices set forth below. These respondents have caused said capsules when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. These respondents have maintained, at all times material to this complaint, a substantial course of trade in said capsules in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Kenneth Beirn participated in the promotion, sale and distribution of the book entitled "Calories Don't Count" and the safflower oil capsules designated "CDC Capsules" and has participated in the acts and practices herein described.

PAR. 3. Simon and Schuster, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Jason C. Berger an officer of Simon and Schuster, Inc., actively participates in the formulation, direction and control of the policies, acts and practices of said corporation including the acts and practices hereinafter set forth.

Richard L. Grossman was formerly an officer of Simon and Schuster, Inc., during which time he actively participated in the formulation, direction and control of the policies, acts and practices of said corporation in connection with the acts and practices as hereinafter set forth.

Schwab, Beatty and Porter, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

Simon and Schuster, Inc., and Jason C. Berger are now, and for some time last past have been, engaged in the publication, promotion, sale and distribution of a book entitled "Calories Don't Count" by Herman Taller. They cause said book when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. They maintain, and at all times mentioned herein have maintained, a substantial course of trade in said book in commerce, as "commerce" is defined in the Federal Trade Commission Act. Richard L. Grossman has engaged in the business described herein and has participated in the acts and practices herein described.

Schwab, Beatty and Porter, Inc., is now and at all times mentioned herein has been, the advertising agency of Simon and Schuster, Inc., and now prepares and places, and has prepared and placed, for publication the advertising and promotional material, referred to herein, to induce the sale of the aforesaid book, and through such means has promoted the sale and distribution of Safflower Oil Capsules.

Herman Taller, an individual, is a physician licensed and practicing in the State of New York.

PAR. 4. In the course and conduct of the business of jointly promoting, selling and distributing the book "Calories Don't Count" and the safflower oil capsules, CDC Capsules, all respondents named herein, and the corporations and individuals referred to in Paragraph 3 herein, have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of books and safflower oil capsules.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase in commerce of said book and of safflower oil capsules, respondents and the corporations and individuals referred to in Paragraph 3 herein have made certain statements and representations with respect thereto in said book and in other advertisements inserted in newspapers and magazines, and in other promotional material, having a general circulation throughout the various States of the United States and in the District of Columbia.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements and other promotional material disseminated as herein set forth are the following:

News about a revolutionary reducing plan, based on a new biochemical discovery * * *.

UNBELIEVABLE—but true! You need to eat fat if you are to be slim. It isn't how many calories you consume that matters — but what kind of calories. The inclusion of polyunsaturated fatty acids in your diet is the essential step toward loosening the body's long-stored fat. It is the key to your losing only excess fat rather than vital body tissue.

In this just-published book, CALORIES DON'T COUNT, Dr. Herman Taller explains the principles behind this new understanding of the body's chemistry — and tells you in full detail:

1. How to eat three full meals a day and lose weight in the safest way possible.

* * * * *

4. How this radical new way of losing weight is linked with a low cholesterol count, better skin condition, and resistance to colds.

5. Why you may eat fried foods every day and keep slim — what kind of fats to fry them in.

* * * * *

After painstaking research he put his program into practice on a group of 93 problem dieters with extraordinary success. Today patients from all over the country come to Dr. Taller for treatment. And his principles have won ever widening interest in the medical field. In the preface to the book he writes:

"The concept this book advances is revolutionary. Perhaps all I need say in support of my nutrition principle is that it works. It has been tested in medical laboratories and among large numbers of patients. There have been no failures, nor can there be any when the principle is properly applied. For it is based on new knowledge — a medical breakthrough."

* * * * *

How this radical new way of losing weight is linked to a low cholesterol count, better skin condition and resistance to colds and sinus trouble.

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CALORIES DON'T COUNT

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In addition, you must supplement your diet further in unsaturated fats. In all, you should take three ounces of highly unsaturated vegetable oil and eat two ounces of margarine every day * * *.

* * * * *
 The key substance in vegetable oils is linoleic acid, an essential, unsaturated fatty acid. The oils with the greatest quantity of linoleic acid are most valuable in conquering obesity and in keeping cholesterol level low * * *.

* * * * *
 Clearly, safflower oil is the most valuable by far. * * * Safflower oil is becoming more easily available, both in liquid form and in capsules obtainable at drug and department stores or through such mail-order sources as Cove Pharmaceuticals, New York.

PAR. 7. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents and the corporations and individuals referred to in Paragraph 3 herein have represented, directly and by implication:

1. That the dietary principles expounded in said book are new, that they are based on a new discovery, new knowledge and new understanding, and that they constitute a medical breakthrough;

2. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet;

3. That the book truthfully reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, and that polyunsaturated fatty acids are more effective in a reducing diet than are other fats;

4. That said book enables a person to improve the condition of his skin and increase his resistance to colds and sinus trouble;

5. That all other reducing programs and principles will cause loss of vital body tissue or are less safe than those set forth in said book;

6. That the book truthfully reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. That calories are not important in relation to obesity, and that a person can reduce his body weight, regardless of the number of calories consumed, by following the principles set forth in the book sold under the title "Calories Don't Count";

8. That safflower oil capsules will be of substantial value as a part of diet in reducing body weight.

PAR. 8. In truth and in fact:

1. The dietary principles expounded in said book are not new. They are not based upon a new discovery, new knowledge or new understanding and do not constitute a medical breakthrough;

2. A person, by the inclusion of polyunsaturated fatty acids in his diet, will not be able thereby to loosen long-stored fat;

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3. It is not an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that they are more effective in a reducing diet than are other fats;

4. Said book will not enable a person to improve the condition of his skin or increase his resistance to colds or sinus trouble;

5. Many reducing programs and principles other than those of respondents' and the corporations and individuals referred to in Paragraph 3 herein when properly administered, will not cause loss of vital body tissue and are no less safe than the reducing programs and principles of the respondents and the corporations and the individuals referred to in Paragraph 3 herein;

6. It is not an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. Calories are important in their relation to obesity, and the number of calories consumed by the individual is important to, and directly related to, the reduction of his body's weight. Contrary to representations of the respondents and the corporations and individuals referred to in Paragraph 3 herein a person cannot, by following the principles set forth in the book "Calories Don't Count", reduce his body weight without regard to the number of calories consumed;

8. Safflower oil capsules are not of substantial value as a part of a diet in the reduction of body weight.

Therefore, the statements and representations as set forth in Paragraph 6 and 7 were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their businesses, the respondents and the corporations and individuals referred to in Paragraph 3 herein have entered into understandings, agreements and planned courses of action to mislead and deceive the public into believing that the reducing plans outlined in said book, including the use of safflower oil capsules, would produce the results in bringing about the reduction in body weight specified and implied through representations contained in said book. Thus, through their understandings, agreements, and planned courses of action, respondents and the corporations and individuals referred to in Paragraph 3 herein conceived the scheme to make the book entitled "Calories Don't Count" an advertising material which would promote the sale of safflower oil capsules. In doing so the respondents and the corporations and individuals referred to in Paragraph 3 herein and each of them acted to induce members of the public to purchase said book and also to purchase safflower oil capsules in commerce.

Pursuant to the said understandings, agreements, arrangements, planned courses of action, combination and conspiracy and in further-

