

Complaint.

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FEDERAL TRADE COMMISSION

v.

PAUL BALME, TRADING UNDER THE NAME AND STYLE
OF B. PAUL.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 764—April 14, 1922.

SYLLABUS.

Where an individual engaged in the importation, manufacture, and sale of a henna hair dye, which had theretofore come to be well and favorably known abroad under its fanciful name of "L'Oreal-Henne" and was the first preparation of its kind to be offered on the domestic market, advertised and sold said preparation as "L'Oreal" in containers bearing the words, "La Plante Merveilleuse"; and thereafter a competitor,

- (a) With the intent of appropriating the reputation and good will of said preparation advertised and sold his product as "Henna D'Oreal," in containers likewise bearing the words, "La Plante Merveilleuse" and resembling the containers of the original preparation in color, shape and size; with the result that confusion was thereby brought about and he or his vendees were enabled to pass off his product as and for the original; and
- (b) With a capacity to deceive and mislead the purchasing public, advertised his product as "Henna D'Oreal—New French Discovery * * *" and "THE ONLY HARMLESS COLORING IN THE WORLD"; notwithstanding the fact that said product was compounded principally from a formula found in technical books and in use in France for many years, and that there were other equally harmless henna hair dyes:

Held, That such simulation of trade or brand names, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Paul Balme, trading under the name and style of B. Paul, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent carries on business in New York, N. Y., under the name and style of B. Paul and since June, 1915, has

been engaged in manufacturing and selling a hair dye which he designates as "Henna D'Oreal", and causes that product to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in 1913 F. L. LeBeau, Inc., was made the sole distributor in the United States for a hair dye made in France, known as "L'Oreal Henne", which product was purchased in France and resold in the United States by said F. L. LeBeau, Inc., until the year 1918, when on account of difficulties in importing that product due to the then existing war, said F. L. LeBeau, Inc., obtained from the manufacturer the formula for said "L'Oreal Henne", together with the exclusive right to manufacture that product in the United States, which product has, since 1918, been manufactured and sold in the United States by said F. L. LeBeau, Inc., which company had built up an extensive trade in said "L'Oreal Henne" throughout the several States of the United States, and had established an association in the minds of the buying public between said F. L. LeBeau, Inc., as identified by the name of its said product or by the trade insignia, and said product "L'Oreal Henne". That respondent in the course of his business as described in Paragraph 1 hereof, has marketed the product sold by him in packages which so closely resembled in shape, size, color, printed matter thereon and general appearance, the packages in which "L'Oreal Henne" had been marketed, that such similarity was calculated to and did deceive the purchasing public under the ordinary conditions which prevailed in the usual course of retail trade, and purchasers were induced by said similarity of the packages to buy respondent's product upon the mistaken belief that it was "L'Oreal Henne". That the similarity in the name of respondent's product, "Henna D'Oreal", and the name "L'Oreal Henne" was further calculated to and did deceive the purchasing public and the purchasers were thereby induced to purchase respondent's product under the mistaken belief that it was "L'Oreal Henne".

PAR. 3. That respondent further in the course of his said business, has caused advertisements to be published in newspapers of general circulation throughout the United States, and has caused to be printed circulars which were given general circulation by respondent throughout the United States, which advertisements and circulars contained numerous false and deceptive statements of and concerning "Henna D'Oreal", the product manufactured and sold by him; that among such false and deceptive statements were statements to the

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effect that "Henna D'Oreal was a new French discovery and provides the only harmless coloring in the world, whereas that product was not a new discovery and was not manufactured in France and was not superior to and did not differ materially from numerous other Henna hair dyes which had been on sale and in general use for a long period of time; that such false and deceptive statements were calculated to and did mislead and deceive the purchasing public, and by means thereof the purchasing public have been induced to purchase "Henna D'Oreal" in preference to similar competing products, upon the mistaken belief that "Henna D'Oreal" was a new French discovery and was the only harmless hair dye on the market.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Paul Balme, trading under the name and style of B. Paul, charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent, Paul Balme, trading under the name and style of B. Paul, having filed his answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before Edward M. Averill, a Trial Examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared in person and by counsel.

And thereupon this cause came on for a final hearing upon the complaint and the answer thereto, the report of the Trial Examiner and the exceptions thereto, and was argued by counsel, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Paul Balme, trading under the name and style of B. Paul, with principal place of business at 34 West Thirty-seventh Street, New York, State of New York, has since June, 1915, engaged in the manufacture and sale of a henna

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hair dye designated by him "Henna D'Oreal", which said product is sold and shipped by the respondent from New York through and into other states of the United States in interstate commerce; and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. In the year 1913, one F. L. Lebeaux, trading as F. L. Lebeaux, Inc., with principal place of business in the City of New York, State of New York, entered into a contract with Messrs. Schueller and Sperry, the proprietors of the Societe Francaise de L'Oreal of Paris, France, by the terms of which contract F. L. Lebeaux became the sole distributor in the United States of a henna hair dye made in France under a formula owned by the Societe Francaise de L'Oreal. This hair dye was styled and labeled "L'Oreal-Henne" and was put up in tin boxes of a light blue color with lettering in a darker shade of blue, all the wording upon the containers being in the French language except on the band which seals the box and upon that appear a few words in the English language.

PAR. 3. From 1913 up to 1918 this dye was imported from France to the United States, but in the year 1918, owing to the exigencies of the war, F. L. Lebeaux obtained from the French owners the right to manufacture the dye in the United States under the French formula, and since 1918 Lebeaux has ceased importing, and manufactures the henna hair dye in New York City. The hair dye was first imported and later manufactured in the United States and is sold by F. L. Lebeaux, Inc. to jobbers and wholesalers throughout the various states of the United States. During the years 1913 and 1914, Lebeaux advertised this hair dye in the American Hair Dresser, a magazine devoted to the hair dressers' trade having a circulation during those years of from 2300 to 2500, the magazine being distributed among hair dressers and beauty parlor proprietors throughout the United States. In the June and July issues of 1913, the dye was advertised as "Oreal-Henne," in subsequent issues as "L'Oreal," the word "Henne" not being used in conjunction therewith. In 1914, Lebeaux ceased to advertise in this magazine but in September, 1915, resumed advertising but at no time was there any extensive advertising campaign carried on and very little effort appears to have been made to extend the trade or popularize the product "L'Oreal."

PAR. 4. The henna hair dye "L'Oreal" is sold in New York City, Philadelphia, Washington, Pawtucket, R. I., Summit, N. J., Pittsburgh, Pa., Cleveland, Ohio, Chicago, Ill. and San Francisco, Calif. The extent and growth of the business is shown by the amounts imported, stated in terms of dollars (approximately);

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1913 -----		\$400
1914 -----		600
1915 -----		1, 500
1916 -----		2, 000
1917 -----		2, 500
1918 -----		1, 500

but Lebeaux commenced manufacturing in 1918 and the product put on the market was in excess of the figure shown above for 1918, and in 1919 there was manufactured in the United States by Lebeaux approximately \$6,000 worth of the product and in 1920 approximately \$10,000.

PAR. 5. Henna is an oriental plant from the leaves of which for centuries a dye has been obtained. "L'Oreal" is a coined word from which by a rather tortuous process an English equivalent "the beautiful" may be extracted. The Societe Francaise de L'Oreal of Paris had for some seventeen or twenty years prior to 1913 been manufacturing and selling a preparation made from the henna plant which they styled "L'Oreal-Henne," and described the same as a marvelous plant and natural re-coloration for the hair, and the said dye had acquired a reputation in continental Europe and England, but no prepared henna dye for live human hair had been on the markets of the United States prior to 1913 and "L'Oreal-Henne" was the first of such preparations on the American market. Other henna preparations followed among them being "Gloria," afterwards changed to "Henalfa," "L'Aureole-Henne," "Libyan-Henne," "Jeans Orientale" and "Henna D'Oreal."

PAR. 6. In the year 1915, the respondent, Paul Balme, trading as B. Paul, began to manufacture and sell and has continued to manufacture and sell in interstate commerce throughout the United States a henna hair dye to which he gave the name "Henna D'Oreal," which was put up in boxes similar in color, shape and size to the container in which the preparation "L'Oreal-Henne" was put out (Com. Ex. 8 and 1).¹ The designs and the wording upon the boxes are in some respects similar though in other respects quite dissimilar. The wording upon the respondent's container is almost entirely in the English language, only a few French words being used, and among the French words so retained by the respondent upon his container are the words "La Plante Merveilleuse" which phrase also appears upon the container in which "L'Oreal" is packed. The wording upon the container for "L'Oreal" is in the French language, with only a few English words. The designs or figures upon the respective containers are distinctly different but the word OREAL is identical. It is an arbitrary word designating the product and the

¹ Not printed.

prefixing of "D" does not clearly and distinctly differentiate the respondent's product, "D'Oreal," from the product "L'Oreal." There is also a distinct similarity in sound and on the whole the name "D'Oreal," together with the size, color, and general appearance of the package in which it is offered for sale produces confusion and enables the respondent or his vendees to pass off upon the public the respondent's product, "D'Oreal" for goods of [the] French preparation, "L'Oreal," and the similarity in name, size, color and general appearance of the containers is such as is likely to deceive or mislead ultimate or ordinary purchasers.

PAR. 7. The French preparation, "L'Oreal" was the original. The respondent was aware of such preparation being upon the market both in Europe and in the United States and intentionally adopted the similar name, "D'Oreal," and put his preparation upon the market in containers similar in appearance to that of the French preparation for the purpose and with the intent to appropriate to his own use and advantage the reputation and good will acquired by the said French preparation, "L'Oreal."

PAR. 8. The respondent, B. Paul, has extensively advertised his preparation, "D'Oreal", and from 1915 to 1921, inclusive, expended between \$50,000 and \$60,000 in advertising, and in the course of said advertising the respondent inserted or caused to be inserted in various magazines and newspapers throughout the United States advertisements containing the following expressions:

Henna D'Oreal—New French Discovery—all shades from black to blonde. Composed of pulverized henna and herbs provides the most natural coloring in the world. (Com. Ex. 19.)

Other advertising matter speaks of the preparation as:

Henna D'Oreal—New French Preparation. (Com. Ex. 9, Resp. Ex 6.)¹

There also appears upon the container in which respondent's product is offered for sale the following:

Henna D'Oreal a new non-chemical French preparation composed of pulverized henna and herbs which will color gray, faded or bleached hair to its original or any desired shade. THE ONLY HARMLESS COLORING IN THE WORLD. (Com. Ex. 8.)¹

PAR. 9. The statement in the advertisement of the respondent "New French Discovery," is untrue, the hair dye of the respondent not being a new discovery but one compounded principally from a formula found in technical books, which formula had been in use in France for many years, and such statement was calculated to deceive and mislead the purchasing public. The statement used by

¹ Not printed.

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the respondent in his advertisement as applicable to his hair dye "The only harmless coloring in the world" was likewise untrue, the evidence showing that there were other henna hair dyes equally as harmless as that of the respondent and such statement was calculated to deceive and mislead the purchasing public.

CONCLUSION.

That the practice of the respondents as described in the foregoing findings as to the facts are unfair methods of competition in interstate commerce, and are a violation of the provisions of Section 5 of the Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Paul Balme, trading under the name and style of B. Paul, his agents, servants and employees cease and desist:

1. From using the coined word "Oreal" either standing alone or in connection with any prefix thereto as a trade name or descriptive name for a henna hair dye when sold and distributed in interstate commerce.

2. From placing the coined word "Oreal" either standing alone or otherwise, or at all, upon the containers in which the henna hair dye sold and distributed by the respondent is marketed in interstate commerce.

3. From using the coined word "Oreal" either standing alone or otherwise, or at all, in any circular, newspaper, magazine or other means of advertising henna hair dye sold and distributed by the respondent in interstate commerce.

4. From using on the container in which the henna hair dye is sold or distributed in interstate commerce the French words "La Plante Merveilleuse" or in any labels or in any circular, newspaper,

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magazine or other medium of advertising henna hair dye in such a way as to confuse respondent's product with any competing product.

5. From putting up the henna hair dye sold and distributed in interstate commerce by the respondent in any container so similar in color and general appearance of lettering or device with that of a competitor as to confuse and mislead the public into believing that the henna hair dye of the respondent is one and the same as that of its competitor.

6. From using either on the label of the container in which the henna hair dye is packed, or in advertising in newspapers, circulars, pamphlets, placards or any other advertising medium any false or deceptive words or phrases such as "New French Discovery" or "The only harmless coloring in the world," or any phrase or phrases of similar import when applied to the henna hair dye of said respondent when sold or distributed in interstate commerce.

And it is further ordered, that the respondent shall file with the Federal Trade Commission within ninety (90) days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, stationery, advertisements, trade names, devices or labels distributed and displayed to the public by respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order and the respondent shall also file with the Federal Trade Commission within ninety (90) days from the date of this order, two samples of the containers in which respondent packs the henna hair dye which the said respondent sells or distributes in interstate commerce.

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v.

C. H. KORB AND W. M. DWYER, TRADING AND DOING
BUSINESS UNDER THE FIRM NAME AND STYLE OF
KORB & DWYER.