

Complaint

IN THE MATTER OF

MAUD B. CLOUGH AND W. H. SIEBRECHT, JR., PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE SIEWIN COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1306—September, 25, 1926

SYLLABUS.

Where a firm engaged in the manufacture and sale of hair preparations consisting of (1) a compound which acted as a depilatory solely and had been long known to the medical profession, and (2) a lotion which had no effect either in removing hair or retarding further growth thereof after removal and consisted of a widely known compound with the addition of a small amount of ammonia,

- (a) Applied and used the word "Killrute" as a name for the aforesaid lotion; and
- (b) Made such statements in advertising their preparations in newspapers and magazines of general circulation, in theater programs, circulars inclosed with the containers thereof, etc., as "One \$5 treatment is all you will ever need", "The first and only hair remover which will positively destroy the hair root", "* * * goes below the surface and stops the hair growth at its source * * *", "* * * is something new and different. It not only instantly removes superfluous hair, but destroys the endocrine gland upon the secretions of which hair growth is dependent", "* * * saps the life from the hair cell, thereby causing the hair to die as a plant does when deprived of nourishment", "* * * will destroy hair growth harmlessly, painlessly, safely, surely", "* * * The powder acts as an instant hair remover; the Lotion stops hair growth", "* * * Science's latest and most marvelous discovery pertaining to superfluous hair removal and destruction. * * * works upon an entirely new principle to stop the future growth"; the fact being that no lotion, combination of drugs or chemicals known to the medical profession would do the things claimed for the aforesaid lotion;

With the effect of misleading and deceiving the public in reference to the aforesaid preparations and causing it to purchase said lotions as and for a permanent remover of superfluous hair through its supposed action in killing the hair follicle, and of diverting trade from and injuring the business of competitors who truthfully advertised and represented their products:

Held, that such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Morgan J. Doyle and Mr. E. J. Hornibrook for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission char-

respondents, partners engaged in the manufacture of a compound for the removal of hair, and in the sale thereof to dealers and direct to consumers, and with principal place of business in New York City, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondents falsely represented in their advertisements in newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and in various sections thereof, and in leaflets, booklets, and circulars distributed by them among the trade and consuming public, and in printed programs of theaters and like places of amusement, that their said compound would, when applied to the skin, remove any and all hair to which applied, and also destroy the roots thereof, and thereby prevent regrowth, the fact being that it did not destroy the roots or prevent regrowth; with the effect of misleading and deceiving the trade and public in respect of the action and effect of their said depilatory and inducing the purchase thereof in such belief in preference to depilatories of competitors, who do not falsely represent or assert that their products kill or permanently remove the roots of the hair and prevent regrowth; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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" (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer, hearings were had and evidence introduced in support of the allegations of the complaint and on behalf of respondents before a trial examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Maud B. Clough and W. H. Siebrecht, jr., are partners trading under the name and style of Siewin Co., with their prin-

incipal place of business located at New York in the State of New York. They are now and have been since 1923 engaged in the business of manufacturing, selling and distributing preparations designated "Siewin Hair Remover" and "Kilrute Lotion," adapted for use in removing hair from the human body. Said preparations are now and at all times mentioned herein were sold direct upon mail orders to the general public and to the general public through jobbers and retail dealers. In carrying on the aforesaid business the respondents caused said preparations when so sold to be transported in interstate commerce from their place of business in New York through and into other States of the United States to be delivered to the respective purchasers thereof in such other States. In the course and conduct of their business as aforesaid respondents are now and were at all times herein mentioned in direct active competition with many individuals, partnerships, and corporations engaged in the sale and distribution throughout the different States of the United States in interstate commerce of preparations adapted for use in removing hair from the human body.

PAR. 2. Respondents in the course and conduct of their business as set forth in paragraph 1 above caused to be published in newspapers and magazines of general circulation throughout the several States of the United States and in theater programs distributed in theaters in New York City and inclosed in the containers in which their said products were sold as set forth above numerous statements and claims that the use of their products "Siewin Hair Remover" and "Kilrute Lotion" would destroy the hair follicle or root and bring about the permanent removal of superfluous hair, and made numerous other like and similar statements and claims concerning the merits of their said preparations and distributed same to the general public throughout the different States of the United States in circulars, circular letters and booklets. Among such statements and claims are the following:

- (a) One \$5 treatment is all you will ever need.
- (b) The first and only hair remover which will positively destroy the hair root.
- (c) Kilrute Lotion has been proven beyond question to be the only safe sure method of permanently destroying superfluous hair, and if applied night and morning will dry up the secretions given off by the hair gland upon which the papilla is fed and from which it draws its nourishment, literally starving the papilla to death. The papilla once dead can form no new hair root and consequently the hair goes and is gone for good.

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(d) Kilrute Lotion goes below the surface and stops the hair growth at its source. It enters each hair channel and descends to the glands which supply nourishment to the hair root. It dries up these glands, stops their secretions, thereby literally starving the hair to death. It can never come back, just as the plant never grows again after its root has died from lack of nourishment.

(e) Kilrute is something new and different. It not only instantly removes superfluous hair, but destroys the endocrine gland upon the secretions of which hair growth is dependent.

(f) Hair growth is destroyed when the wonderful Kilrute Lotion is used. Let Kilrute destroy your superfluous hair. It can and will.

(g) Kilrute saps the life from the hair cell, thereby causing the hair to die as a plant does when deprived of nourishment.

(h) The use of Kilrute will destroy hair growth harmlessly, painlessly, safely, surely.

(i) Kilrute stops hair growth by actually sapping the life from the hair base, thereby stopping the papilla from feeding the hair, literally starving it and causing it to die in much the same manner as a plant dies when deprived of water.

(k) Kilrute Hair Destroyer Lotion has proven beyond a doubt the only right way to completely destroy superfluous hair.

(l) A lotion has been prepared which when externally applied is absorbed into the pores of the skin and in a very short time dries up the secretions from the hair gland, literally starving the papilla to death. This lotion was named Kilrute. It will surely and permanently destroy all hair in a very short time.

(m) Kilrute Superfluous Hair Destroyer, containing lotion and powder—Science's first and only remedy for really destroying superfluous hair. Kilrute Combination Treatment consists of Siewin Powder and Kilrute Lotion. The powder acts as an instant hair remover; the Lotion stops hair growth.

(n) Scientists have labored long to solve the problem of permanently removing unwanted hair without harming the skin. Now, at last, it has been found in the safe and marvelous treatment.

(o) Kilrute is something new and different. There is nothing like it on the market. It is Science's latest and most marvelous discovery pertaining to superfluous hair removal and destruction. Kilrute not only instantly removes the hair faster and pleasanter than the ordinary depilatory but works upon an entirely new principle to stop the future growth. It melts and destroys the endocrine gland upon the secretions of which hair growth is dependent.

Among other statements claims made by respondents concerning the merits of their product "Kilrute" and distributed by respondents in interstate commerce in the form of booklets is the following:

I studied the growth of hair—the source of its nourishment, etc., and decided that if its nourishment could be cut off the hair would have to die. I perfected a lotion which will penetrate the hair cell—check its nourishment and thus stop hair growth forever. Kilrute Lotion is its name. It is logical—it had to come.

PAR. 3. The fact is that respondents' preparation, a barium sulphite compound designated "Siewin Hair Remover" functions as a depilatory and when applied to a growth of hair upon the human body will remove the hair outside the surface of the skin but will have no effect upon the hair follicle or root and the hair will grow out again as quickly as if it had been removed by the razor. Said barium sulphite compound if applied properly is capable of removing only that portion of the hair from the human body outside the surface of the skin but will not affect the hair follicle or root or prevent or retard the further growth of the hair. This barium sulphite compound has been well known to the medical profession and described in the literature of the medical profession for more than fifty years. Respondents' preparation "Siewin Hair Remover" consists of the following ingredients: Volatile material consisting of water and perfume $3\frac{1}{6}\%$ per cent; zinc oxide 21 per cent; starch 8 per cent; barium compounds, largely barium sulphite, 57 per cent.

PAR. 4. The fact is that respondents' preparation designated "Kilrute Lotion" will neither remove a growth of hair or prevent or retard its further growth after the removal of same by a depilatory or by means of the razor. The preparation "Kilrute Lotion" is what is known to the medical profession as spirits of camphor, a widely known and used compound with two tenths of 1 per cent of ammonia added and will not do any of the things claimed for it in respondents' advertisements as set forth in paragraph 2 above. The fact is that not only will this lotion fail to do the things claimed for it by respondents but that there is no lotion combination of drugs or chemicals known to the medical profession which will do the things claimed by respondents for their product "Kilrute Lotion." Said product consists of the following ingredients: Alcohol 70 per cent; Water 30 per cent, by volume; containing in solution about 5 per cent of camphor and 0.2 per cent of ammonia.

PAR. 5. The statements and claims concerning the merits of the preparations "Siewin Hair Remover" and "Kilrute Lotion" made by respondents in advertising and otherwise as set forth above are

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false and the use by respondents of such statements and claims in advertising and otherwise as set forth herein is calculated to and tends to and does mislead and deceive the public into believing that said preparations will kill or destroy the follicle or root of hair and prevent or retard future growth and tends to and does divert trade and injure the business of competitors who truthfully represent and advertise their products.

PAR. 6. The word "Kilrute" as applied by respondents to their preparation designated "Kilrute Lotion" for use in removing hair from the human body is false and deceptive and is calculated to and does enable respondents to sell their product to the public and tends to and does mislead and deceive the public and cause the public to purchase said preparation under the impression and belief that said preparation will kill the hair follicle or root and permanently remove superfluous hair. The natural and necessary consequences of the appropriation by respondents of the name "Kilrute Lotion" under the facts of this case is to mislead and deceive the public and divert trade and injure the business of competitors who truthfully advertise and represent their products.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in commerce and constitute a violation 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 respondents, testimony and evidence, the Commission having made its findings as to the facts and its conclusion drawn therefrom that respondents, Maud B. Clough and W. H. Siebrecht, jr., partners, doing business under the trade name and style of Siewin Co., have violated 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,"

It is ordered, That respondents, Maud B. Clough and W. H. Siebrecht, jr., individually and as copartners, doing business under

the trade name and style of Siewin Co., their agents, representatives, servants, and employees cease and desist from directly or indirectly:

(1) Using or displaying in connection with the manufacture and sale of depilatories or hair removers the word "Kilrute" standing alone or in conjunction with other words or names, as a brand or trade name or otherwise or at all.

(2) Using or displaying in connection with the manufacture and sale of depilatories or hair removers the word "Kilrute" standing alone or in conjunction with other words or names on labels, containers, packages, billheads, or stationery, or in circulars, booklets, advertising or otherwise or at all.

(3) Representing through newspapers, magazines, theater programs, circulars, or booklets or displaying on letterheads, stationery, or billheads or upon labels, containers or packages in which depilatories or hair removers are packed, shipped or distributed or otherwise or at all that depilatories or hair removers sold or offered for sale by respondents under a brand or trade name or otherwise will cause any destructive action of hair growth or will permanently remove hair from human skin or destroy or kill the hair root or follicle or prevent or retard the further growth of hair.

(4) Misrepresenting the merits of any depilatory or hair remover or similar product manufactured and sold by respondents either on containers or packages in which the sales are made or in the labels, booklets, circulars, or other advertising matter used, issued, published, or distributed in connection with such sales or in any other way.

It is further ordered, That Maud B. Clough and W. H. Siebrecht, jr., within sixty days after the 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 hereinbefore set forth.

IN THE MATTER OF

H. REISMAN & COMPANY AND HARRY REISMAN, INDIVIDUALLY AND AS PRESIDENT OF RESPONDENT H. REISMAN & COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1377—September 25, 1926

SYLLABUS.

Where a corporation engaged in the sale by mail of watches, jewelry, and other articles of merchandise described in its catalogues, and also in the sale of such merchandise and catalogues to those desiring to engage in a similar business, in response to its advertisements; and the president, manager, and principal owner of the aforesaid corporation; in describing the articles dealt in as above set forth in their catalogues,

- (a) Made numerous false and misleading statements and representations relative thereto, variously and falsely representing the same as composed in whole or in part of gold, platinum, and other precious metals, or ornamented with sapphires, rubies, pearls, and other precious stones, or covered and finished in leather, "art leather" and "leatherette", or made of ivory or "French Ivory", the fact being that the stones and other substances used were not those named, but only imitated or resembled the same;
- (b) Represented articles depicted and described therein as having been purchased from the manufacturers and in some instances imported, and as offered at prices below prevailing retail prices, due to elimination of profits of middlemen, the fact being that such articles were purchased from domestic wholesalers and resold at a profit; and
- (c) Set forth pretended prevailing retail prices for the articles depicted and described, which were greatly in excess of those at which such articles were offered, the fact being that said purported retail prices were greatly in excess of prevailing prices, which were substantially similar to those at which such articles were offered and sold;

With the result that many of the consuming public were induced to purchase said articles in reliance upon the truth of such statements and representations, many persons conducted a mail order business in such articles through and by means of the aforesaid catalogues in reliance upon the truth thereof, and the means of defrauding the public was placed in the hands of vendees, who well knew the facts, by enabling them to offer and sell such articles through and by means of such catalogues; to the prejudice of competitors who dealt in merchandise composed in whole or in part of the aforesaid precious metals, stones or other substances, truthfully so represented, and of competitors who dealt in merchandise neither so composed, nor so represented, or who did not thus misrepresent retail prices, or sources of supply and alleged advantages in price, and with the effect of diverting business from and otherwise injuring and prejudicing the aforesaid competitors:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. Charles Melvin Neff for the Commission.