

IN THE MATTER OF

LEROY A. KLING, JOHN E. WEDDELL, WILLIAM R. DURGIN, CECIL WIDDEFIELD, COPARTNERS DOING BUSINESS UNDER THE TRADE NAMES AND STYLES DR. EAGAN MANUFACTORY, DR. S. J. EAGAN, DR. EAGAN LABORATORY, PHARMACEUTICAL PRODUCTS, LTD.; KLING-GIBSON COMPANY

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

Docket 1352. Complaint, Oct. 23, 1925—Decision, Dec. 16, 1927

Where a firm engaged in the sale of toilet preparations, purchased by it from manufacturers who prepared and compounded the same according to their own formulæ, and neither associated in any way in the conduct of its business with a physician, nor operating any factory or laboratory whatsoever, and doing business under the trade names and styles "Dr. Eagan Manufactory", "Dr. S. J. Eagan", "Dr. Eagan Laboratory" and "Pharmaceutical Products, Ltd."; and a corporation engaged in the preparation and publication of its advertising, and in extending it financial aid, and sharing in its profits; in advertising said preparations in booklets, leaflets, trade literature, magazines, and periodicals of general circulation,

- (a) Featured the aforesaid trade names;
- (b) Falsely represented such preparations as made in accordance with the private formula of a Dr. S. J. Eagan, represented as a person of great ability, experience, and standing in his profession, and as compounded in their factory and laboratory under his direct supervision;
- (c) Falsely represented, among other things, that certain gloves offered and sold as "Dr. Eagan's Magic Gloves", were medicated with a marvelous solution prepared by such doctor and whitened, softened, etc., the hands through one night's wearing, and were renewed as to their aforesaid alleged virtues through the application thereto of a solution named by them "Rémedicator", and made false and misleading representations of a similar tenor concerning preparations respectively designated as "Dr. Eagan's Hand Tissue Builder", and "Dr. Eagan's Skin Whitener";
- (d) Represented that their "Dr. Eagan's Medicated Soap" contained the same ingredients as the gloves and skin whitener, and that their "Facial Film" contained "Neoplasma", worth \$5,000 a pound, and adrenalin, of a similar value, and that said facial film when applied to the face would, within a few hours or minutes, remove all wrinkles, blemishes, traces of age, etc., and renovate the face to a condition of youthful beauty by rebuilding the skin structure, and flesh beneath, the fact being that the first-named product contained no medicament whatsoever, that the so-called "Neoplasma" was purely fictitious, that adrenalin was worth about \$16 a pound, and that said facial film would not produce the results claimed for it; and

(e) Represented that their "Dr. Eagan's Lotion Depilatory" would remove all hair and traces thereof from the body by a process of dissolving the same, and contained no sulphide or other harming drug, the fact being that it only temporarily removed hair down to the surface of the skin and that the principal and active agent thereof was sulphide of hydrogen; With the intent to deceive and defraud the public and induce the purchase of said preparations in reliance upon such assertions and representations, and with the effect of so doing, and of diverting business from and otherwise injuring and prejudicing competitors engaged in the sale of toilet articles to dealers and the consuming public, without in any wise misrepresenting their origin, or nature or the results to be obtained from the use thereof:

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

Mr. Henry Miller for the Commission.

McCormick, Kirkland, Patterson & Fleming, of Chicago, Ill., and *Mr. Vernon W. Van Fleet*, of Washington, D. C., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent partners, engaged in the sale of cosmetics and other toilet preparations, and respondent Kling-Gibson Co., an Illinois corporation, with principal office and place of business in Chicago, and engaged in the preparation and publication of the aforesaid firm's advertising (in addition to being guarantor of its credit and associated with it otherwise through financial aid and a share in its profits), with advertising falsely or misleadingly in misrepresenting the composition and nature of the preparations advertised and with using misleading trade name, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, doing business, in the case of the partnership, under such trade names and styles as "Dr. Eagan Manufactory," "Dr. J. S. Eagan," and "Pharmaceutical Products, Ltd.," featured such names in all their advertisements, together with numerous false, fraudulent, and misleading statements and representations concerning their products, with the intent of deceiving and defrauding the public and inducing the purchase of the articles advertised by them in reliance upon such assertions and representations.

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Said statements and representations, included, among others, the following:

That all of the preparations, with the exception of one, were manufactured in accordance with a private formulæ of a purported Dr. S. J. Eagan, represented as a physician of great ability, high standing, etc., and were compounded in the factory and laboratory operated by them, under said doctor's direct supervision, the fact being that no physician was connected in any way with respondent's business and that respondents operated no factory or laboratory, but purchased the articles dealt in by them from the manufacturers, who prepared the same according to their own formulæ and not in accordance with those of any physician.

That "Dr. Eagan's Magic Gloves" were medicated with a marvelous solution, and when worn for one night would beautify and whiten the hands, etc., the fact being that they were not medicated and would not produce the results claimed.

That a solution furnished with the gloves, and termed "Remediator," would, when applied thereto, remedicate the same so as to produce the results set forth in the first instance, the fact being that such solution would not impart any medicament whatsoever or cause the gloves to produce any such effects.

That "Dr. Eagan's Hand Tissue Builder" was a deep tissue builder rich in tissue nourishing properties, which would build up the hand, round out the contours thereof, etc., the fact being that it would not produce any of the aforesaid results.

That "Dr. Eagan's Skin Whitener" would remove all signs of tan, freckles, etc.

That "Dr. Eagan's Medicated Soap" contained the same medicaments as the gloves and skin whitener, the fact being that it contained no medicament.

That the product designated "Facial Film," would, when applied to the face, remove within a few hours or minutes all wrinkles, blemishes, traces of age, worry, and nervousness and renovate the face to a condition of youthful beauty; that it contained "Neoplasma," worth \$5,000 a pound or contained adrenalin, of an equal value, the facts being that it would not produce any of the results claimed; there was no such products as "Neoplasma," and adrenalin was worth about \$16 a pound.

That "Dr. Eagan's Lotion Depilatory," would, when applied to the body, remove all hair therefrom and traces thereof, and contained no sulphide or other harmful drug, the fact being that it would not remove hair from the surface of the skin, that hair re-

moved to such point, would regrow, and that the principal and active agent of the product was sulphide of hydrogen.

Such false, fraudulent, and misleading assertions and representations, as charged by the complaint, have the capacity and tendency to cause, and the effect of causing many of the consuming public throughout the United States to purchase such articles in reliance thereon, and to divert business from and otherwise injure and prejudice competitors who do offer articles to the dealers and the consuming public, without misrepresenting the origin, nature or character thereof or the results and effects to be obtained therefrom.

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, the Federal Trade Commission issued and served upon the respondents above named a complaint charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearances and filed answers herein to said complaint, a hearing for the taking of testimony and evidence before an examiner of the Federal Trade Commission, theretofore duly appointed, was held and evidence in chief was received, but before the completion of the taking of testimony and other evidence in chief in support of the allegations of said complaint, said hearing was, at the request of counsel for respondents, suspended and, thereupon counsel for respondents filed of record herein, under Rule III of the Commission's rules of practice, their statement that respondents desire to and do waive a hearing herein on the charges set forth in the complaint and desire not to contest the complaint and that said respondents will refrain from contesting the proceeding and they and each of them consent that the Commission may make, enter and serve upon respondents an order to cease and desist from the alleged violations of law charged in the complaint.

Thereupon, this proceeding came on for decision; and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Leroy A. Kling, John E. Weddell, William R. Durgin and Cecil Widdefield are partners doing business under the trade names and styles "Dr. Eagan Manufactory" "Dr. S. J. Eagan", "Dr. Eagan Laboratory" and "Pharmaceutical Prod-

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ucts, Ltd.", with their place of business in the city of Chicago, State of Illinois. They are engaged in the business of selling cosmetics, creams, lotions, and other toilet preparations for the treatment and dressing of the human skin and hair, hereinafter collectively referred to as toilet articles, direct to consumers residing at points in the various States of the United States. They cause said products when so sold to be transported from their said place of business in the city of Chicago, Ill., into and through other States in the United States to said vendees at their respective points of residence. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the business of selling toilet articles in commerce between and among various States in the United States.

PAR. 2. Respondents conduct their business in the following manner: They cause advertisements describing their said toilet articles and soliciting orders therefor by mail to be inserted in various magazines and periodicals of general circulation throughout the United States and in various sections thereof. Through said means, respondents obtain many orders for their aforesaid toilet articles from persons residing, respectively, in various States of the United States and upon receiving said orders respondents fill the same and complete the sales thus made by causing the toilet articles so ordered and sold to be transported from their said place of business in the city of Chicago, Ill., to such vendees at their aforesaid respective points of residence.

PAR. 3. Respondent, Kling-Gibson Co. is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. Said respondent composes and prepares aforesaid advertising for and on behalf of respondent partners and causes same to be published in aforesaid publications. Further, respondent corporation guarantees the credit of, and otherwise extends financial aid to, said partners and shares in the profits of their aforesaid business.

PAR. 4. In all their aforesaid advertisements, and in booklets, leaflets, and other trade literature which they send to customers and prospective customers, respondents variously cause their aforesaid trade names to be prominently set forth together with numerous false, fraudulent and misleading statements and representations concerning their said toilet preparations, the ingredients whereof same are composed and the results to be obtained from the use thereof. Said assertions and representations are made by respondents with the intent and purpose of deceiving and defrauding the public and of inducing the public to purchase respondents' said toilet articles in reliance upon said assertions and representations.

PAR. 5. Among the false, fraudulent, and misleading statements and representations made by respondents in their said advertising and trade literature referred to in paragraph 3 hereof, are the following:

(a) With regard to all aforesaid toilet articles, with the exception of a certain preparation denominated, advertised, and sold by respondents as "Facial Film", respondents represent that said toilet articles are made conformably and according to private formulæ of a purported Dr. S. J. Eagan, who is by respondents represented to be a physician of great ability, experience and high standing in the medical profession and that said articles are compounded in a factory and laboratory operated by respondents and that said articles are compounded under the direct supervision of said Dr. S. J. Eagan. In truth and fact, there is no physician whatsoever in anywise connected or cooperating with respondents in their said business and respondents operate no factory or laboratory whatsoever, but purchase the toilet articles in which they deal from others who manufacture same and said toilet articles are prepared and compounded conformably and according to formulæ originated and supplied by said manufacturers and in no instance to a formula supplied by respondents or by any physician.

(b) With regard to certain gloves offered for sale and sold by respondents under the name "Dr. Eagan's Magic Gloves", respondents represent that said gloves are medicated with a marvelous solution perfected by the famous Dr. S. J. Eagan; that when worn for one night said gloves will beautify, whiten, soften and make smooth the hands, will remove freckles and other blotches and discolorations from the hands and will make the hands fresh and young-looking. In truth and in fact said gloves are not medicated and will not cause or produce above named effects and results or any of them.

(c) With regard to a certain solution furnished by respondents with said gloves, and which is denominated by respondents "Remedicator", respondents represent that said solution when applied to said gloves will remedicate said gloves and cause same when worn upon the hands to produce all the effects and results in specification (b) hereof set out. In truth and in fact said "Remedicator" when applied to said gloves does not impart to same any medicament whatsoever, and will not cause said gloves to produce aforesaid effects and results or any of them.

(d) With regard to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Hand Tissue Builder", respondents represent that same is a deep tissue builder, rich in tissue nourishing properties, which will build up the hand, round out the contours thereof, and render the skin thereof fine and firm

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so as to develop the hands to a youthful fulness. In truth and in fact said hand tissue builder will not when applied to the hands nourish the tissues or skin thereof in any manner whatsoever and will not cause or produce the effects and results set out in this specification or any of them.

(e) With regard to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Skin Whitener", respondents represent that same will remove all signs of tan, freckles, moth patches, liver spots and other skin discolorations from the hands. In truth and in fact said skin whitener will not cause or produce the effects and results set out in this specification, or any of them.

(f) With regard to a certain soap offered for sale and sold by respondents under the name "Dr. Eagan's Medicated Soap", respondents represent that same contains the same medicaments as are contained in aforesaid Dr. Eagan's Medicated Gloves and aforesaid Dr. Eagan's Skin Whitener. In truth and in fact said soap contains no medicament whatsoever.

(g) With respect to a certain product offered for sale and sold by respondents under the name "Facial Film", respondents represent that when applied to the face said facial film will within a few hours or a few minutes time remove all wrinkles, furrows, blemishes, and all traces of age, worry, and nervousness, and renovate the face to a condition of youthful beauty by rebuilding the skin structure and flesh beneath the skin. In various said advertisements, respondents represent that said "Facial Film", contains "Neoplasma" worth \$5,000 per pound and in others of said advertisements, respondents represent that said "Facial Film" contains adrenalin and that adrenalin is of the value of \$5,000 per pound. In truth and in fact said "Facial Film" when applied to the face will not cause or produce the effects and results in this specification set out, nor any of them; that there is no such product as "Neoplasma" and that adrenalin is of the value of about \$16 per pound.

(h) With respect to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Lotion Depilatory", respondents represent that the same when applied to the human body will remove all hair therefrom and all traces thereof by a process of dissolving and that said product contains no sulphide or other harming drug. In truth and in fact said product will not remove human hair below the surface of the skin and such hair as is removed by said product to a point even with the surface of the skin will regrow upon that portion of the body to which said product has been applied. Further, said product contains as its principal and active agent sulphide of hydrogen.

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents thereto; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions 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,"

It is now ordered, That, in connection with the sale and distribution in interstate commerce of cosmetics, creams, lotions, toilet articles, or any other preparation or product for the treatment or care of the human body, or in advertising matter designed and used to promote, advertise, or further the sale of any of said products or articles, respondent Leroy A. Kling, John E. Weddell, William R. Durgin, and Cecil Widdefield, their agents, representatives, servants, and employees, and respondent Kling-Gibson Co., a corporation, its officers, directors, agents, servants, and employees, cease and desist:

(1) From making or publishing or causing to be made or published through any means whatsoever any statement, assertions, representations or pictorial reproductions, with the purpose, intent or effect of thereby deceiving, defrauding or misleading the purchasing public;

(2) From using the names "Egan" (also spelled "Eagan"), "Dr. Egan", or "Dr. S. J. Egan", or the name or title of any doctor, physician or medical practitioner, real or fictitious, in the trade name, brand name, description or representation of the products heretofore sold and distributed by respondents as and under the names "Facial Film", "Neoplasma", "Magic Gloves", "Dr. Egan's Magic Gloves", "Dr. Egan's Medicator", "Medicator", "Remedicator", "Dr. Egan's Hand Tissue Builder", "Hand Tissue Builder", "Dr. Egan's Skin Whitener", "Skin Whitener", "Dr. Egan's Medicated Soap", "Medicated Soap", "Dr. Egan's Lotion Depilatory", and "Lotion Depilatory";

(3) From using the trade names or styles "Dr. Egan Manufactory", "The Egan Manufactory", "Dr. S. J. Egan", "Dr. Egan Laboratory", "The Egan Laboratory" or any other trade name containing the name "Egan", or the name or title of any doctor, physician or medical practitioner, real or fictitious;

(4) From representing in any manner whatsoever that a so-called "Dr. Egan" or any other fictitious or real medical practitioner or other professional or supposedly famous person has been or is in

any way connected or associated with the origin, discovery, preparation, application, or use of any of aforesaid products or articles when such is not true in fact;

(5) From representing in any manner whatsoever that said so-called "Magic Gloves" are medicated or that their use will beautify, whiten, soften, or make smooth the hands, or will remove freckles and other blotches and discolorations from the hands, or will make the hands fresh and young looking or will have any therapeutical effect whatever upon the hands;

(6) From representing in any manner whatsoever that said so-called "Medicator" or "Remedicator" contains or possesses, or when applied to aforesaid so-called "Magic Gloves", or any other gloves, will impart to such glove any medicinal or therapeutical properties whatever;

(7) From representing in any manner whatsoever that said so-called "Hand Tissue Builder" or similar product contains any tissue building or nourishing properties, or that when applied to the hands it will round out the contours thereof or render the skin thereof fine and firm so as to develop the hands to youthful fullness;

(8) From representing in any manner whatsoever that said so-called "Skin Whitener" contains any properties capable of removing, or when applied to the hands will remove, tan, freckles, moth patches, liver spots, or any other skin discolorations;

(9) From representing in any manner whatsoever that said so-called "Medicated Soap" is a medicated soap or that it contains any medicinal properties whatever;

(10) From representing in any manner whatsoever that there is a drug, biological or other product known as or called "Neoplasma" when such is not true.

(11) From representing in any manner whatsoever that aforesaid so-called "Facial Film", or similar product, when applied to the face will remove wrinkles, furrows, blemishes or any traces of age, worry and nervousness, or that it will in any way renovate the face, or rebuild the skin structure or flesh beneath the skin, or have any other effect whatever toward producing or aiding a condition of youthful beauty;

(12) From representing in any manner whatsoever that aforesaid "Lotion Depilatory" contains no sulphide or that when applied said lotion depilatory will permanently remove hair from the human body by a process of dissolving or otherwise;

(13) From representing in any manner whatsoever that any of the respondents are the manufacturers or the compounds of any of

the aforesaid products or articles, or that any of the respondents own, operate or control a factory or laboratory wherein or whereby any of aforesaid products or articles are manufactured or compounded, unless and until such respondents actually own and operate or directly and absolutely control a factory or laboratory wherein and whereby all of such products or articles so represented are manufactured or compounded.

It is further ordered, That respondents shall within 60 days after the service upon them of a copy 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
THE NEW YORK PHARMACEUTICAL CONFERENCE, INC.

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

Docket 1392. Complaint, July 7, 1926—Decision, Jan. 9, 1928

Where a druggists' incorporated association, managed by delegates of affiliated associations, composed of a majority of the retail druggists and pharmacists of New York City and Westchester County, N. Y.; in seeking to induce the adoption by manufacturers and other vendors concerned of a "Distributor Plan" evolved by its Trade and Welfare Committee, which (1) was directed to remedying price demoralization in the territory involved, (2) had for its purpose the adoption and maintenance of suggested minimum resale retail prices, (3) stressed use of channels of distribution running from manufacturer to wholesaler to retailer to public as the correct and economically sound method of distribution, (4) defended maintenance of resale prices on trade marked and patented goods, and the manufacturer's and distributor's rights to select dealer vendees willing to cooperate, and to decline relations with price cutters, (5) condemned direct dealing between manufacturer and retailer and particularly the granting of special terms and discounts to chain, drug and department stores by the former, and (6) was called to the attention of, and urged upon, such manufacturers and vendors,

- (a) Issued to those manufacturers, wholesalers and jobbers, who satisfied its representatives as to their sales policies being in harmony with, and their own approval of, its aforesaid plan, "Courtesy Cards", for the use of their salesmen, with the result that those not supplied therewith encountered sales resistance and, in some cases, refusals to order or even to accord interviews;
- (b) Published in its trade monthly, current, revised lists of those concerns supplied with the aforesaid cards; and
- (c) Published articles in the aforesaid trade organ and elsewhere, and circulars, emphasizing and urging upon the members the desirability and necessity of adopting price standardization, "keeping to full resale prices," and cooperating with and bestowing their favor and patronage upon, those concerns whose names were listed as above set forth;

With the result that sale and distribution of merchandise by various manufacturers, wholesalers and jobbers engaged in interstate commerce in those articles usually kept for sale in retail drug stores, were impeded and interfered with to a substantial extent, certain manufacturers and vendors were induced to adopt price maintenance policies, and others to maintain such policies more strictly, price cutting was reduced, and retail prices accordingly enhanced:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.