

Syllabus

IN THE MATTER OF

I. J. ROSENBLOOM AND JAKE A. ABLIN, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE THE RESTORAL 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 1616. Complaint, May 6, 1929—Decision, June 29, 1929

Where a firm engaged in the sale of a shampoo and of a hair color restorer, which (1) operated simply as a dye, (2) did not bring back the natural color of the hair except as, applied over a sufficient length of time, it brought a shade possibly very similar to or even identical with the original, (3) contained as its essential ingredients Sodium Thiosulphate, Resorcinol, and Lead Acetate, long used for dyeing the hair and a poison apt to be harmful when frequently rubbed into the scalp, and (4) possessed no tonic properties and had no efficacy in making the hair grow, or in preventing dandruff, and which preparation, together with said shampoo, was sold by it, under the name Restoral, by mail, and was extensively advertised in magazines, booklets, circulars, and other printed matter,

- (a) Falsely labeled the bottles containing said hair restorer "RESTORAL 'Double Duty' Tonic For Gray Hair For Falling Hair Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair";
- (b) Stated in its said advertisements that said Restoral would gradually bring back the original color of the hair and aided the growth thereof through its excellent tonic qualities, with no harmful ingredients;
- (c) Advised the use thereof from one to three times a week as needed, after the restoration of the natural color, as a tonic for the scalp and to insure beautiful color permanence, and advised the user not to be alarmed at possible development at first of a slight variation of shades but to continue the treatment as directed, which would soon bring the desired shade, the facts being, in addition to those above set forth, that said variation usually happened and was of long persistence and that the desired shade rarely developed; and
- (d) Falsely and unfairly stated in the labels and advertisements of its said Restoral Shampoo, endorsed by it for use with said tonic, that the same was free from harmful ingredients found in average soaps, many of which were injurious to the scalp, containing free alkali, strong chemicals, and other harmful ingredients, notwithstanding the fact that there were on the market excellent soaps free from such ingredients and chemicals;

With the tendency and capacity to mislead and deceive the public into purchasing said Restoral in the false belief that the same was a natural hair color restorer and not a dye, and a preparation which would restore the original color by replenishing the color glands, stop falling hair and prevent

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dandruff, and constituted an effective hair tonic; to the prejudice of the public and its competitors;
Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William T. Kelley 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 charged respondent individuals, partners engaged at Chicago in the sale of a hair color restorer and a shampoo, with advertising falsely or misleadingly and misbranding or mislabeling, 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, in describing their so-called hair color restorer, a dye containing lead acetate, sodium thiosulphate, and resorcinol and apt to be harmful to the body if frequently rubbed into the scalp by reason of the first-named ingredient, and with no tonic effect or virtue in preventing falling hair, or in bringing back the original color, in advertisements in magazines, circulars, etc., and on the bottles containing the same made such false and misleading statements as "‘Double Duty’ Tonic For Gray Hair For Falling Hair. Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair", "* * * an excellent tonic and hair restorer. There are no harmful ingredients of any kind in Restoral", and in advertising and labeling its Restoral Shampoo made the false and unjust statements and representations "It is free from harmful ingredients found in average soaps and we indorse this shampoo for use with Restoral Tonic", "Free alkali, strong chemicals, and various other harmful ingredients found in many soaps are injurious to the scalp and hair", there being excellent soaps on the market free from strong chemicals and harmful ingredients.

Said statements and representations, as alleged, have the tendency and capacity to mislead and deceive the purchasing public into purchasing the product in question as and for a natural hair color restorer and not a dye, and as an effective hair tonic and a product which will restore the original color by replenishing the color glands, stop falling hair and prevent dandruff; 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, the Federal Trade Commission issued and served upon the respondents above named on the 8th day of May, 1929, a complaint charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act, together with notice that answer should be filed within 30 days after service of the complaint and with a copy of the Rules of Practice of the Commission as to answers (Rule III).

The respondents did not enter an appearance and have not filed an answer to the complaint within the time required by the rules or at all.

Thereafter, the chief counsel for the Federal Trade Commission on June 19, 1929, filed with the Federal Trade Commission a motion moving respondents' failure to appear and answer to be deemed and taken to be an admission of all allegations of the complaint, to authorize the Commission to find them to be true, to waive hearing on the charges set forth in the complaint, and that thereupon an order to cease and desist issue as prayed for in the complaint.

Thereafter, the Commission on June 20, 1929, issued and served upon respondents said motion of the chief counsel for the Commission and notified respondents that the Commission would hear said respondents on said motion on Friday, June 28, 1929, at 2 p. m. in the hearing room, Federal Trade Commission Building, 2000 D Street NW., Washington, D. C. The respondents did not appear or answer said motion on the day so fixed or at all. No answer or return of any kind whatsoever has been filed by said respondents.

Thereupon this proceeding came on for decision and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the trade name and style The Restoral Co., with their principal office and place of business in the city of Chicago, State of Illinois. They are engaged in the business of selling a hair color restorer called Restoral and a shampoo called Restoral Shampoo under the firm name "The Restoral Co."

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PAR. 2. Respondents in the conduct of their business as aforesaid sell and distribute said hair color restorer Restoral and said shampoo called Restoral Shampoo throughout the various States of the United States. They cause said hair color restorer and shampoo when so sold to be transported from their place of business in the city of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of hair color restorers and shampoos in commerce between and among the various States of the United States.

PAR. 3. Respondents sell and distribute their said products by mail order and to facilitate the sale of said products respondents do a large amount of advertising in magazines, periodicals, booklets and circulars, and other printed matter, wherein they cause to be set forth certain alleged merits for their said products. Respondents procure orders by mail through the means above set out and fill said orders by causing their said products so ordered to be shipped from their said place of business in the city of Chicago, to such vendees.

PAR. 4. In said advertisements so published in magazines, periodicals, and in said printed booklets and circulars, and on the bottles containing said hair color restorer Restoral, respondents make the following false statements and representations in language substantially as follows, to wit:

(1)

RESTORAL

Double Duty

TONIC

For Gray Hair

For Falling Hair

Not a dye but a new kind of tonic that brings back the original
color to the hair and promotes the growth of new hair.

(Bottle label)

The above statements are false and misleading. In truth and in fact Restoral is not a tonic for gray hair. Restoral will neither bring back the original color nor will it promote hair growth. Restoral is of no value in preventing falling hair. Falling hair is a natural process. A certain amount of hair is regularly dislodged from the follicles. It is true that in certain conditions where the follicles are undernourished or otherwise disturbed, there may be and often is a greater degree of loss than at other times. Restoral can not rectify this.

(2) After the color has been restored to your hair, make it a point to use Restoral one to three times a week as needed. This will insure a permanent beautiful color and the tonic will aid the growth of the hair. (Advertisements.)

The above statements are false. Restoral does not restore the color to the hair. It simply dyes it. Applying Restoral repeatedly is simply for the purpose of maintaining or accentuating the color and dyeing the hair as it grows out of the scalp. Restoral does not possess any tonic properties. It will not make the hair grow.

(3) Restoral will gradually bring back the original color to your hair. (Advertisements.)

The above statement is false. Restoral will not bring back the original color. Restoral if applied over a sufficient length of time will dye the hair some shade but will not bring back the natural color. There may be cases where dyeing will give a color very similar to or even identical with the original shade.

(4) Do not be alarmed if you should notice a slight variation of shades at first because this is merely an action sometimes noticeable when Restoral starts to work. Continue with the treatment according to the directions and soon the hair will take on the shade you desire. (Advertisements.)

The above statements are false. This variation usually happens at the outset and persists a long time in many cases. A shade of some color will develop but it is rare that it will be the desired shade. It can not restore the natural color.

(5) Restoral, as you know, is an excellent tonic and hair restorer. There are no harmful ingredients of any kind in Restoral. (Advertisements.)

The above statements are false. Restoral is neither an excellent tonic nor a hair restorer. The essential ingredients in Restoral are lead acetate, sodium thiosulphate, and resorcinol. Lead acetate itself is a well known chemical that has long been used for the purpose of artificially dyeing the hair. Lead acetate is a poison which is apt to be harmful to the human body if frequently rubbed into the scalp.

(6) Use Restoral as a tonic for the scalp even after you have restored the natural color to your hair. (Advertisements.)

The above statement is false. Restoral is not a hair tonic, neither will it restore hair to its natural color.

PAR. 5. In order to induce the users of Restoral to employ Restoral Shampoo, respondents made the following statements and representations:

It is free from harmful ingredients found in average soaps and we indorse this shampoo for use with Restoral Tonic. (Bottle Label.)

Free alkali, strong chemicals, and various other harmful ingredients found in many soaps are injurious to the scalp and hair. (Advertisements.)

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The above statements are false, unfair, and unjust. There are excellent soaps on the market free from strong chemicals and harmful ingredients.

PAR. 6. The statements and representations so made by respondents have the tendency and capacity to mislead and deceive the public into purchasing the product Restoral under the false belief—

That said hair color restorer is a natural hair color restorer and not a dye; that said hair color restorer will restore the original color of hair by replenishing the color glands; that said hair color restorer will stop falling hair and prevent dandruff, and that said hair color restorer is an effective hair tonic.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that respondents 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 now ordered, That the respondents, I. J. Rosenbloom and Jake A. Ablin, and each of them, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution in interstate commerce of any preparation or product for the care, treatment or dressing of the human hair or skin:

(1) From making or causing to be made in any manner whatsoever any representation, statement, or assertion to the effect that such preparation or product (a) is not a dye, (b) or that it does not act as a dye, (c) or that it will restore hair to its original or natural color, (d) or that it is a tonic for hair, (e) or that it will promote the growth of hair, (f) or that it will stop hair from falling out, (g) or that it is harmless or will not produce harmful or deleterious effect upon the user, (h) or that it is beneficial to the scalp, (i) or that it replenishes the color glands of the hair, (j) or that it is a

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remedy or cure for dandruff, when any such statements, representations, or assertions are not respectively true in fact.

(2) From making or causing to be made in any manner whatsoever any other false, misleading, or deceptive statement, representation, or assertion of or concerning the ingredients, uses, effects, action, origin, manufacture, sale, or distribution of any such preparation or product.

It is further ordered, That respondents, I. J. Rosenbloom and Jake A. Ablin, 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
PAN-AMERICAN MANUFACTURING COMPANY, 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 1472. Complaint, July 23, 1927—Decision, July 5, 1929

Where a corporation engaged in the manufacture and sale of extracts, ice cream powder, syrups and flavors for soft drinks, including an artificially colored and flavored product first made by itself and its predecessor in the form of a syrup and later as a concentrate, for use in making an artificial grape drink, and with the taste, smell and color of a genuine grape drink, but with only an infinitesimal amount of the juice or fruit thereof,

- (a) Sold said product in competition with makers of and dealers in genuine grape juice, under the name "Grapico" and featured said word in the labels thereof, with only a relatively small notice, if any, of the artificial flavoring and coloring of the product; and
- (b) Set forth said trade name, together with the words, in smaller letters, "Sparkling," and "Naturally Good," in its advertisements in trade periodicals, display cards, newspapers, boys' caps for customers' use, and in its price lists, order blanks, and stationery, with no such notice whatever, and upon the bottle caps or crowns supplied at its instance to customers outside the State, with only relatively small notice of such coloring and flavoring;

With the capacity and tendency to mislead and deceive purchasers of beverages made therefrom into believing the same to be composed wholly or in substantial amount of the juice or fruit of the grape and of placing in the hands of customers the means of committing a fraud upon the consuming public by enabling them to offer and sell said public a drink made substantially from imitation fruit flavors as and for one made from the true fruit:

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

Mr. E. J. Hornibrook for the Commission.

Legier, McEnery & Waguespack, of New Orleans, La., and *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Louisiana corporation engaged in the manufacture of a concentrate or syrup under the name "Grapico," and in the sale thereof to bottling concerns through the various States, and with principal office and place of business in New Orleans, with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5