

Syllabus

IN THE MATTER OF

CHARLES NESSLER, AN INDIVIDUAL TRADING UNDER THE NAME AND STYLE OF C. NESTLE COMPANY, AND ALSO UNDER THE NAME AND STYLE SOCIETY FOR THE ADVANCEMENT OF HAIR AND BEAUTY SCIENCE; AND NESTLE-LEMUR COMPANY AND CHARLES NESSLER AS AN OFFICER THEREOF

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

Docket 1833. Complaint, May 16, 1930—Decision, June 5, 1931

Where an individual engaged in the manufacture, sale, and/or lease of hair-waving machines, and appliances, instruments and supplies for use in connection therewith, including a so-called text-o-meter for testing the hair; in pursuance of plans for promoting and extending his said business, and in connection therewith for impressing the trade and public with the independence and impartiality of an organization created and controlled by him, and the value of its approval and recommendation,

- (a) Caused to be organized an ostensibly disinterested association under the name "Society for the Advancement of Hair and Beauty Science," and a board of trustees therefor, with staff of administrative and advisory officers and office provided by him, and caused it to be announced, as coming from said society, that it had been formed by those concerned in the development and extension of improved and scientific methods in the trade, to furnish it and the public reliable and disinterested advice on all matters relating to the chemistry of beauty parlors, hair treatments, hair dyes, permanent waving, and such other treatments as might be practical, and all other subjects or matters that might arise from time to time in the trade in connection with the service of the public; fact being that aforesaid society was not a bona fide independent and impartial organization of hair dressers, beauty-parlor operators, or others interested as above set forth, but was composed of business associates, friends, employees, or others related in some manner or degree to himself, and of employees of the corporate successor to his business, and expense of organizing, operating, and maintaining such alleged society had been and was advanced by him;
- (b) Caused the society to form, ostensibly, a so-called examination board to investigate, as represented to trade and public, claims of manufacturers and merits of products or methods advertised or suggested by them, and practices and methods from time to time introduced or followed in the trade, and represented that the society had and would maintain a legal adviser to report to it and procure actions against those who were or might be attempting to "foist inferior goods or treatment on their patrons"; facts being no examinations were held by the society to ascertain merits of products other than those offered and leased by said individual, or to enable society to furnish fair and disinterested advice and suggestions to trade and public, and so-called examinations were merely a method of

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- presenting products of said individual to the public, falsely represented as supported by the unbiased judgment and impartial recommendation of a body of trained and experienced individuals acting in the interest of the public;
- (c) Caused the society to assume and continue publication of his "Permanent Waver and Hair Dresser" trade organ, as "Hair and Beauty Science," the change being announced with such statements as that the leaders of the industry had "combined their great resources for advancement" in connection with the "new standards" imposed by "the great growth of scientific hair treatment and beautification" and that the society was undertaking publication of the journal, in question, "that its influence and inspiration" might "become more important than was previously possible";
 - (d) Represented in advertisements in daily newspapers and trade journals and in such publications as aforesaid Hair and Beauty Science that a method had been discovered by which the hair could be permanently waved without injury, but that use of aforesaid text-o-meter was necessary for such purpose, without disclosing his responsibility and interest therein; facts being use thereof was not necessary for any hair treatment, and there were other efficient competitive machines suitable for the purpose without use of said text-o-meter;
 - (e) Represented in aforesaid Hair and Beauty Science that said text-o-meter, made, sold, or leased under the company trade name employed by him in conducting his said business, "had been examined, approved and endorsed" by the society, and would be and was used by all hair dressers who had passed its examination, based on said individual's textbook, without disclosing that he was also the manufacturer of the instrument so endorsed, or any information or notice that the society's membership was composed largely of his employees, and was his instrument or agency for extension of his business, and exploitation of his apparatus;
 - (f) Stated in aforesaid Hair and Beauty Science that "numerous beauty parlor owners and employees were attempting to give permanent waves without the slightest qualification or examination, but that this would be changed as a result of examinations of hair operators or of those engaged in the operation of beauty parlors and hair dressing establishments conducted, and to be conducted by the society," and represented therein that every hair dresser who had passed the society's examination would use a hair "text-o-meter" to test the client's hair in advance, and that in his or her booth should appear the graduation certificate of the society, bestowed and to be bestowed only on those found competent, and advised customers to look for aforesaid badge; facts being that it was his policy and practice to cause to be accepted as eligible for approval by the society, and for badges and certification of competency, only those owning or operating said text-o-meter, or contemplating purchase or operation thereof, and the "examinations" necessarily resulted in the further and more extended use of the text-o-meter and other machines sold or leased by him;
- With the capacity and tendency to mislead and deceive the public into the purchase or use of said text-o-meter in the erroneous belief that it had been or was endorsed and recommended by an organization of disinterested individuals representing the trade, as necessary for use in testing the hair

preliminary to permanent waving, and into purchase or use of other machines, instruments, appliances, and products offered for sale by him and his organization, and thereby to divert trade from competitors selling their products by fair and truthful representations:

Held, That such practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. George F. Handel and *Mr. Joseph R. Kelly*, of *Swiger, Scandrett, Chambers & London*, of New York City, 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 Charles Nessler, doing business as C. Nestle Co., and also under the name and style Society for the Advancement of Hair and Beauty Science, engaged in the manufacture of machines for waving the human hair, and of appliances, instruments, and supplies for use in connection therewith, including a so-called Text-O-Meter for testing the hair, and in the sale and lease of aforesaid articles to purchasers and proprietors of hair dressing and beauty parlors, and with place of business in New York City, and respondent Nestle-Lemur Co.,¹ an Ohio corporation, successor to aforesaid Nestle Co., and with principal office and place of business also in such city, with creating and exploiting, misleadingly, ostensibly informed and disinterested endorsement of product, and advertising falsely or misleadingly, in respect thereof, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent Nessler, as charged, engaged as above set forth, in pursuance of plans and policies for extending the use of his aforesaid text-o-meter and other appliances, and the promotion of his business, caused to be organized an unincorporated association, under the designation Society for the Advancement of Hair and Beauty Science, ostensibly disinterested, but in fact financed and controlled by him, and, following its organization, by respondent Nestle-Lemur Co., and composed of friends, associates and employees.

¹ Organized by consolidation of the Lemur Co., theretofore engaged in manufacture and sale among the various States of supplies and equipment for use in beauty parlors, and of said C. Nestle Co., the unincorporated concern owned and conducted by respondent Nessler, and engaged in conducting the manufacturing and distributing business formerly conducted by said Lemur Co., and said Nestle Co.

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In order to make his said scheme or plan and the deception involved therein more effective, respondent Nessler, as alleged, did the following acts and things:

(a) Organized a so-called board of trustees with staff of officers, for such society and provided an office therefor;

(b) Caused it to be announced, as from the society, that it had been formed by those interested in development and extension of improved and scientific methods in the trade, to furnish it and the public reliable and disinterested advice on all matters relating thereto, such as chemistry of beauty parlors, hair treatments, etc.;

(c) Caused to be formed, ostensibly by the society, a so-called examination board to investigate claims of manufacturers, and merits of their products, methods or practices, and of practices and methods introduced, or followed in the trade, facts being no examinations, fair or otherwise, were conducted under auspices of such society to ascertain the merits of any machines or products other than those of respondent, in order to enable society to furnish fair and disinterested advice and suggestions to trade and public, and so-called examinations were no more than devices and methods by which to present respondent's products to the public as supported by the unbiased and impartial judgment and recommendation of "a body of trained and experienced individuals acting in the interest of the public";

(d) Represented the society had and would maintain a legal adviser to report, and bring proceedings against those attempting both to foist inferior goods or treatments on their patrons;

(e) Caused the society to assume and conduct publication of his trade organ under the new name "Hair and Beauty Science," with an announcement calculated to create the impression that said periodical as the organ of the supposed society would serve such society's professed and purported objects;²

(f) Advertised in daily papers, in trade journals, and in said "Hair and Beauty Science" that a method for permanently waving hair without injury had been discovered, and that use of said textometer was necessary therefor, facts being said machine or device was not necessary for so-called permanent waving, or any other proper or desirable hair treatment, and there were competitive articles suitable for the aforesaid purposes, or any other treatment associated in the public mind with beauty parlors or hair dressing establishments;

(g) Represented in said Hair and Beauty Science that numerous beauty-parlor owners and employees were attempting to give permanent waves without the slightest qualifications or examination, that this would be changed as a result of examination of such persons,

²Announcement referred to is quoted below, in the findings, at page 134.

conducted and to be conducted by the society, and that if the hair dresser passed the same he or she would use a text-o-meter, for the client's hair in advance and should have in his or her booth the society's graduation certificate, and advised customers to look for the badge which would be bestowed only on those found competent, facts being only those owning or operating so-called text-o-meters, or intending or contemplating purchase or operation thereof, or of other products of respondents were accepted as eligible for the society's approval, and for badges and certificates of competency, and such examinations as were conducted necessarily resulted in further and more extended use of said text-o-meter and aforesaid other machines and products;

(h) Represented in aforesaid Hair and Beauty Science that the text-o-meter made, sold, or leased by C. Nestle Co. (the trade name employed by him), had been examined, approved, and endorsed by the society and would be and was used by all hair dressers who had passed the examination, based on the text written by respondent "Charles Nessler," without disclosing the author referred to as the manufacturer of the instrument so endorsed, or that the society composed as above set forth was merely his instrument or agency for extension of his business and exploitation of his apparatus;

(i) Respondent Nestle Lemur Co., further, as charged, "succeeded to the control of and still controls and has caused and still and now causes the said alleged Society for the Advancement of Hair and Beauty Science to represent itself, and appear, to be an independent society operated by the trade, and under cover of such professed or reputed independence to exploit or promote the sale or use of the text-o-meter and other machines, instruments, and products of said respondent, and said respondent has withheld from and failed and neglected to disclose to the trade or the public its connection with, or control of such alleged society."

The practices, as alleged, "of respondent Charles Nessler under the name of C. Nestle Co. and as Society for the Advancement of Hair and Beauty Science, and the practices of respondent Nestle-Lemur Co. and of respondent Charles Nessler, in connection therewith have had and have and each of them has had and has the capacity and tendency to mislead and deceive the public into the purchase or use of the product text-o-meter in the belief that it has been and is endorsed and recommended by an organization of disinterested individuals representing the trade, and has been and is necessary to effect permanent waving of the human hair, and into the purchase or use of other machines, instruments, appliances, and

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products offered for sale by respondents, and thereby to divert trade from competitors of respondents.

"Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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 definite its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon Charles Nessler, an individual trading under the name and style of C. Nestle Co., and also under the name and style of Society for the Advancement of Hair and Beauty Science, and Nestle-Lemur Co., a corporation, and Charles Nessler as an officer thereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answers, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission, on the complaint, answer, testimony and evidence, briefs and argument by counsel for the Commission and counsel for respondent, and the Commission having duly considered the same, now makes this its report, in writing, and states its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Charles Nessler, is an individual residing in the City of New York and State of New York, who is an inventor and manufacturer of machines for waving the human hair and of appliances, instruments, and supplies for use in connection therewith. He has engaged in the sale and transportation from his place of business in the City of New York and State of New York of such products under the name and style of C. Nestle Co., to purchasers in the various States of the United States other than the State of New York, in competition with individuals, partnerships, and corporations similarly engaged in like commerce. He has been, and was, until a consolidation with respondent Lemur Co. as hereinafter set forth, president of said C. Nestle Co., and the owner thereof, and for many years said respondent Charles

Nessler, by, through, and with his said trade name C. Nestle Co., engaged in the practice of leasing to proprietors of hair dressing and beauty parlors, machines, apparatuses, and appliances, invented and manufactured by him, and in their transportation from the City of New York into, and through the various States of the United States other than the State of New York for use by lessees of such machines, apparatuses and appliances. More particularly respondent Charles Nessler offered for sale and sold or leased among other products in interstate commerce, a machine for testing the human hair with respect to its susceptibility to permanent waves, and the method by which to accomplish it which had been invented and manufactured by him called or designated text-o-meter.

In order to advertise, promote, and induce the sale of such machine and other machines or their rental and use, and the sale of appliances and products of various kinds for use in connection therewith, or supplemental thereto by and through his so-called C. Nestle Co., respondent Charles Nessler published, and circulated in the various States of the United States, among purchasers and prospective purchasers of his aforesaid products, especially among places of business described as beauty parlors and hair dressing establishments, a periodical which he called the "Permanent Waver and Hair Dresser."

In the month of April, 1928, respondent Charles Nessler, in pursuance of his plans and policies for extension of the use of his text-o-meter and other machines or appliances sold or leased by him and the promotion generally of his products and the further establishment of good will toward his business and products, caused the organization of an unincorporated association represented as herein-after described, and purporting to be a disinterested association, unrelated to him or his business, which he caused to be designated or called the Society for the Advancement of Hair and Beauty Science. In furtherance of his purpose to impress the trade and public with the independence and impartiality of such alleged society and the consequent value and worth of its approval and recommendation along the line for which it purported to be formed, he caused to be organized for it a so-called board of trustees with a staff of administrative and advisory officers. He provided an office for it and its staff or reputed staff in the City of New York and State of New York. He thereupon caused to be announced to the trade as from such alleged society, that it had been formed by those concerned in the development and extension of improved and scientific methods in such trade for the purpose of furnishing it and the public

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reliable and disinterested advice on all matters relating to the chemistry of beauty parlors, hair treatments, hair dyes, permanent waving and such other treatments as might be practiced by the trade and all other subjects or matters that might arise from time to time in the trade in connection with service of the public.

Said respondent Charles Nessler further attempted to create and maintain for such society the appearance of a bona fide organization representative of the industry and trade, and devoted to the scientific development of methods, practices, and treatments generally of face, scalp, and hair, by causing to be formed ostensibly by such society, a so-called examination board, which, it was represented to the trade and public without disclosure of his connection therewith, would investigate the claims of manufacturers and merits of products or methods advertised or suggested by them, and of practices and methods from time to time introduced or followed in the trade. It was further represented, without disclosure of his connection with such representation, that such alleged society had, and would maintain a legal adviser, to report to it and procure actions against those who were or might be attempting to "foist inferior goods or treatment on their patrons."

Respondent Charles Nessler caused such alleged society to assume and continue the publication of his said periodical, the "Permanent Waver and Hair Dresser" under the trade name of "Hair and Beauty Science." In its first number as "Hair and Beauty Science," this publication contained, in announcement of its purpose, the following:

The Society for the Advancement of Hair and Beauty Science, 580 Fifth Avenue, New York, presents this, the first number of Hair and Beauty Science, the journal of the society, succeeding The Permanent Waver and Hairdresser, formerly published by Charles Nessler and now given by him to the society.

Unexpired subscriptions of the older journal will be served with the new publication.

In the larger opportunity, and speaking for the distinguished membership which sponsors the new magazine, Hair and Beauty Science, undertakes to interpret the newer policies and trends in scientific treatment of the hair and adornment of womankind, and in the advancement of the beauty profession in America.

The great growth of scientific hair treatment and beautification arts imposes new standards and leaders of the industry have combined their great resources for advancement, and the society now undertakes publication of the journal that its influence and inspiration may become more important than was previously possible.

It is the purpose of Hair and Beauty Science to point the way of tested improvement, to advance the cause of hygiene, and to raise the standards of service and of professional ethics.

In the year 1928, and during the months of January, March, April, and June, thereof, respondent Charles Nessler caused to be represented in advertisements in daily newspapers and trade journals having circulation in and among the various States of the United States, and in such publications "Hair and Beauty Science" organ of the Society for Advancement of Hair and Beauty Science, that a method had been discovered by which the human hair could be permanently waved without injury, but that the use of the instrument "text-o-meter" was necessary for such purpose, without disclosure of his responsibility for such representation or his connection with such machines, or that he owned, controlled, directed, and in effect was the Society for Advancement of Hair and Beauty Science. Respondent Charles Nessler further caused to be inserted in said publication "Hair and Beauty Science" the statement that numerous beauty parlor owners and employees were attempting to give permanent waves without the slightest qualification or examination, but that this would be changed as a result of examinations of hair operators or of those engaged in the operation of beauty parlors and hair dressing establishments conducted, and to be conducted by the society. He caused to be represented in such publication that every hair dresser who had passed the society's examination would use a hair "text-o-meter" to test the client's hair in advance, and that in his or her booth should appear the graduation certificate of the society; that such badges were bestowed and would be bestowed only on those found competent, and customers were advised to look for this badge. He caused to be represented in such publication that the "text-o-meter" manufactured, sold or leased by C. Nestle Co., had been examined, approved, and endorsed by said alleged society, and would be and was used by all hair dressers who had passed its examination, which, it was represented, would be and was based on a textbook written by respondent Charles Nessler without disclosing any information or notice that said respondent, the author of such so-called textbook, was the manufacturer of the instrument so endorsed by the society, or any information or notice that its membership was composed largely of his employees, and that it was his instrument or agency for extension of his business and exploitation of his apparatus.

PAR. 2. Respondent Nestle-Lemur Co. is a corporation organized under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the City of New York and State of New York. It was organized in the year 1928, by a consolidation of the Lemur Co., which had theretofore been engaged in the manufacture and sale in commerce among or between the various States of the United States, of supplies and equipment for use in so-called

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beauty parlors, and of C. Nestle Co. the said unincorporated concern owned and conducted as described in paragraph 1 hereof by respondent Charles Nessler, and respondent Nestle-Lemur Co. thereupon became and ever since has been the successor in business of the said Lemur Co. and of said Charles Nessler trading under the name and style of C. Nestle Co., and it now conducts the manufacturing and distributing business formerly conducted by the said Lemur Co. and the said Charles Nessler operating as C. Nestle Co., offering for sale and selling the products formerly sold by the Lemur Co. and C. Nestle Co., including the "text-o-meter" and other machines, instruments, appliances, and products for use in connection therewith, and transporting them from its place of business in New York City, N. Y., to purchasers in the various States of the United States, other than New York, in competition with individuals, partnerships and corporations similarly engaged in interstate commerce. Respondent Nestle-Lemur Co. has not had any control or direction over, or connection with the so-called Society for Advancement of Hair and Beauty Science, or with the organ "Hair and Beauty Science," or any of the advertisements or representations appearing in various publications, as from such so-called society.

PAR. 3. In truth and in fact the so-called Society for the Advancement of Hair and Beauty Science has not been, was not, and is not a bona fide independent and impartial society of hair dressers or beauty parlor operators, or of others concerned in the development and extension of improved or scientific methods and practices in the trade, or of disinterested individuals, but was composed of business associates, friends, employees, or others related in some manner or degree to respondent Charles Nessler, prior to the said consolidation of C. Nestle Co. and Lemur Co. and of employees of the Nestle-Lemur Co. since such consolidation. The expense of organizing, operating and maintaining the alleged Society for the Advancement of Hair and Beauty Science has been, and was, advanced by respondent Charles Nessler.

It has been and was the policy and practice of respondent Charles Nessler to cause to be accepted as eligible for approval by the society and for badges and certifications of competency, only those owning or operating the so-called "text-o-meter" machine, or intending, or contemplating purchase or operation of such machine. Such examinations as were conducted under the alleged auspices of said so-called society, necessarily resulted in the further and more extended use of the text-o-meter and other machines sold or leased by respondents Charles Nessler or the Nestle-Lemur Co.

In truth and in fact the said "text-o-meter" sold or leased by respondent Charles Nessler or respondent Nestle-Lemur Co. was

not, has not been, and is not necessary to effect the so-called permanent waving of the human hair or for any other proper or desirable treatment thereof. There have been, were and are machines, instruments, apparatuses, and devices offered for sale, sold or leased by competitors of respondents, suitable for and capable of efficient service in effecting such so-called permanent waves of the human hair without use of the text-o-meter to test it, for any other purpose or for any other treatment usual, necessary or desirable in, or associated in the public mind with so-called beauty-parlors or hair dressing establishments. No examinations, fair, impartial, or of any character were conducted or held by or under the auspices of said alleged Society for Advancement of Hair and Beauty Science, to ascertain the merits or the utility or efficiency of other machines, apparatuses, instruments or devices than those offered for sale or leased by respondent Charles Nessler, or to enable such alleged society to furnish fair and disinterested advice and suggestions to the trade and public. Such so-called examinations were no more than devices and methods by which to present the products of said respondent to the public falsely represented as supported by the unbiased judgment and impartial recommendation of a body of trained and experienced individuals, acting in the interest of the public.

PAR. 4. The aforesaid practices of respondent Charles Nessler under the name of C. Nestle Co. and as Society for the Advancement of Hair and Beauty Science have had, and each of them has had the capacity and tendency to mislead and deceive the public into the purchase or use of the product "text-o-meter" in the erroneous belief that it had or has been endorsed and recommended by an organization of disinterested individuals representing the trade as necessary to use for testing the hair preliminary to permanent waves and into the purchase or use of other machines, instruments, appliances, and products offered for sale by respondents, and thereby to divert trade from competitors of respondents selling their products by fair and truthful representations.

CONCLUSION

The acts and practices of respondent Charles Nessler described in the foregoing findings as to the facts, have been, and are all to the prejudice of the public and competitors of respondent, and have been, and are unfair methods of competition in interstate commerce 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."

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ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents, Charles Nessler, an individual trading under the name and style of C. Nestle Co., and also under the name and style Society for the Advancement of Hair and Beauty Science, and Nestle-Lemur Co., a corporation, and Charles Nessler as an officer thereof, answers thereto, testimony and documentary evidence, briefs and arguments of counsel for the Commission and respondents and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that respondent Charles Nessler, an individual trading under the name and style C. Nestle Co. and also under the name and style Society for the Advancement of Hair and Beauty Science, has been violating 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 therefore ordered, That respondent Charles Nessler, his agents, servants, and employees cease and desist, in connection with offering for sale, or selling, in interstate commerce, the machine or apparatus text-o-meter or any other machine or apparatus, from representing in advertisements or by any other means, or causing to be represented in advertisements under the name of, Society for the Advancement of Hair and Beauty Science, that such machine or apparatus or any other machine or apparatus offered for sale or sold by him has been or is accepted, approved or recommended by the Society for the Advancement of Hair and Beauty Science, unless accompanied by the statement in apt and adequate words that such society is an organization formed, financed, controlled, and directed by him.

It is further ordered, That respondent shall within 60 days from and after service of this order file with the Commission a report in writing setting forth in detail the manner and form of his compliance with the order.

ORDER OF DISMISSAL

This matter coming on to be heard finally, on complaint, answer, testimony, documentary evidence, briefs and arguments of counsel for the Commission and for respondents, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and hereby is dismissed as to respondent the Nestle-Lemur Co., a corporation.

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IN THE MATTER OF
LONG-BELL LUMBER COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1620. Complaint, May 23, 1929—Decision, June 8, 1931*

Where a corporation engaged in the manufacture and sale of lumber and timber products to customers in various sections of the United States, and in foreign countries, sold under the name "California white pine" products produced from the "*Pinus ponderosa*", and so advertised and described the same in trade journals, and other media of national circulation, and in other forms of advertising, circular letters, correspondence, and on letterheads, billheads, and invoices, and orally through its sales force, notwithstanding the fact that the tree belonged in the yellow pine, and not in the white pine, group as long established and recognized by botanists, wood technologists, foresters, and the public generally, and the wood therefrom, though frequently closely resembling true white pine in several of its immediately obvious qualities, and in several of its utilities, did not have those qualities of durability upon exposure, ease of working, ability to stay in place, uniformity, lightness, proportion of heartwood content, ability to retain paint, and others, which under the name "white pine" had come to be associated by the consuming public with the "*Pinus strobus*" or genuine northern white pine through a national and colonial experience of more than 200 years, and, more recently, with other species of the genuine white pine;

With result that a substantial number of retail dealers frequently sold said "ponderosa" lumber, purchased under such designations, upon orders for white pine, not knowing that the lumber so sold was not a true white pine nor wherein it differed therefrom, a substantial number of others, with knowledge of the important differences between the two, substituted said ponderosa, so trade named, for the higher priced, true white pine, the general public unknowingly frequently purchased ponderosa as and for true white pine and upon orders therefor, architects gave their approval to ponderosa products when true white pine and the qualities thereof were sought by buyer and architect, and such products were employed for uses for which less adapted than true white pine; and

With a tendency to bring about adoption of such ponderosa lumber for uses for which comparatively lacking in durability, and a lower public estimation of true white pine, and with effect of diverting trade from competitors selling true white pine products truthfully represented as such, and competitors selling ponderosa products under trade names neither including the phrase "white pine" nor otherwise deceptive or misleading, and of causing many retailers, architects, and consumers to buy said products as and for those of true white pine;

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and constituted unfair methods of competition.