

Complaint

IN THE MATTER OF
NORTHAM WARREN CORPORATIONCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1937. Complaint, Apr. 8, 1931—Decision, Dec. 14, 1931*

Where a corporation engaged in manufacture of toilet articles and preparations, including those used for manicuring the nails and care of the cuticle, and in the sale thereof, under its trade name, in competition with some 75 or 80 other concerns similarly engaged, and doing a business of two or three million dollars a year, extensively advertised and reproduced in women's periodicals and otherwise photographs of and testimonials by actresses of outstanding fame and women widely known by reason of their social prominence or otherwise, without disclosing that preparation by the advertisers of such testimonials for the signature and approval of said personages had been preceded by payment to them of substantial sums by said advertisers, and their agreement not to indorse any other similar preparation for a period of years, and to test adequately advertiser's preparation here in question; with capacity and tendency to mislead and deceive ultimate purchasers of such preparations into the erroneous belief that said testimonials were entirely voluntary and unbought, and with effect of diverting trade from competitors, who do not use purchased testimonials in advertising their products, and with tendency so to do:

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

Mr. Richard P. Whiteley for the Commission.

Breed, Abbott & Morgan, of New York City, 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 New York corporation, engaged in the manufacture of toilet articles and preparations, including products designated and referred to by the trade name "Cutex," and sale thereof in commerce between and among the various States, and with principal place of business in New York City, with advertising falsely and misleadingly as to testimonial indorsements, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as above set forth, in advertising its "Cutex," products in magazines of interstate circulation, published testimonials or indorsements obtained by it "from individuals socially and/or theatrically or otherwise prominent and well known to the American public," as the genuine, voluntary or unbiased opinions

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of the alleged authors,¹ facts being testimonials or indorsements involved were obtained from personages concerned through payments of large sums of money and other valuable considerations, author of first testimonial was not a faithful user of said products, as set forth therein, and second testimonial did not represent genuine, voluntary or unbiased opinion of actress involved.

Said acts and things, as alleged, have "the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that the said testimonials or indorsements are the genuine, voluntary or unbiased opinions of the alleged author or authors thereof, and has tended to induce, and has induced the purchase of respondent's Cutex products by said purchasing public in reliance upon such erroneous belief, and has tended to divert trade from, and has diverted trade from, and thereby injured competitors of respondent"; all to the prejudice of the public and respondent's 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 a complaint upon the respondent, Northam Warren Corp., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint. Thereafter counsel for respondent notified the trial examiner that no testimony would be offered on behalf of respondent, whereupon this proceeding came on regularly for final hearing before the Federal Trade Commission and the Commission having considered the record and being fully

¹ As alleged in complaint, one such testimonial or indorsement so obtained and used by respondent contained the statement: "The new Cutex Liquid Polish is so flattering. I am delighted with the brilliance it gives my nails. I am very careful of my hands—so I am faithful to my Cutex. Before I use the new Cutex Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cutex Cuticle Remover. Then the Liquid Polish which lasts days and days. After that, a bit of Cutex Cuticle Cream or oil to feed the cuticle and my hands can meet even my husband's critical artist's eye."

Another such testimonial or indorsement obtained and used by respondent as above set forth contained the statement, represented as emanating from "———, the best loved actress on the American stage" that:

"To get the full effect of personality, everything must flatter us to our very finger tips.

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle. I take along a Cutex Manicure Set on all my tours."

advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Northam Warren Corporation, has been for several years last past and now is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business in the City of New York in said State.

PAR. 2. Respondent is, and has been engaged for more than two years last past in business in the manufacture, sale, and distribution of toilet articles and toilet preparations including preparations used for manicuring nails and the care of the cuticle, sold under the trade name "Cutex," causing said products when so sold to be transported from the place of manufacture in the State of New York to purchasers thereof located in States of the United States other than the State of New York. In the sale of the said preparations used for manicuring nails and the care of the cuticle sold under the trade name "Cutex," respondent at all times hereinafter mentioned has been, and still is, in competition with other corporations, individuals, firms, and partnerships likewise engaged in interstate commerce in the sale of preparations used for manicuring nails and the care of the cuticle. The principal preparations used for manicuring nails and the care of the cuticle sold by respondent as aforesaid are "Cutex," "Cuticle Remover," "Liquid Damp Polish," "Liquid Polish Remover," "Powder Polish," "Cake Polish," "Nail White," "Cuticle Oil," "Cuticle Cream," and a variety of manicure sets incorporating most of said specified preparations. The sales of Cutex preparations amount approximately to two or three million dollars per annum, and respondent sells to all classes of trade, namely, wholesalers, jobbers, and retailers. In the sale and distribution of the aforesaid Cutex manicure preparations, respondent is in competition throughout the United States with some seventy-five or eighty other corporations, partnerships, firms, or individuals likewise engaged in the sale and distribution of toilet articles and preparations used for similar purposes, some of the principal competitors being Coty, Inc., Harriet Hubbard Ayer, Hudnut, Lustrite Corporation, Gloray, Hyglo, DuBarry, and Barbara Gould. Some of these competitive preparations sell for the same price as the Cutex preparations and some are slightly lower or slightly higher in price.

PAR. 3. Respondent corporation, in the course and conduct of its said business as hereinbefore described, during the years 1928, 1929, and 1930, in the sale of its products in the several States of the United States, has caused advertising matter to be prepared, published, and

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circulated in and among the various States of the United States through National Women's Magazines, through trade papers and newspapers, and over the radio. The women's magazines are used more extensively by respondent in its advertising than are the trade papers and newspapers and the principal magazines so used are the Ladies Home Journal, the Woman's Home Companion, McCall's Magazine, the Delineator, Pictorial Review, Cosmopolitan, Vogue, Harper's Bazaar, and the so-called Tower Group of magazines that are sold through the Woolworth stores. Beginning in the latter part of 1928 and continuing until May, 1930, the respondent, in the course and conduct of its business, as aforesaid, and in advertising its Cutex preparations caused to be published and circulated in the aforementioned women's magazines throughout various States of the United States as part of its advertising campaign, testimonials or indorsements obtained from individuals, socially and/or theatrically or otherwise prominent and well known to the American public.

Under date of August 28, 1928, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Ethel Barrymore the following permission:

Aug. 28, 1928

Colony Club, New York City

I hereby give the Northam Warren Corp. and/or the J. Walter Thompson Co. permission to use in its advertising, my photograph and/or my name and/or a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manicuring product, and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature ETHEL BARRYMORE

Under date of October 13, 1928, Ethel Barrymore gave the following authorization:

Oct. 13, 1928,

144 East 55 St., New York City

In connection with the agreement with The Northam Warren Corp., signed by me, on ——— I authorize the use for advertising of the following statement or any part thereof.

"EVERYTHING MUST FLATTER US TO OUR FINGER TIPS"

SAYS ETHEL BARRYMORE

The best loved actress on the American stage adds: "And of all the ways of grooming the finger tips I find the new Cutex Liquid Polish the most flattering."

"To-day, all the world's a stage," quoted Ethel Barrymore, gaily. "Everywhere fastidious women are faultlessly beautifully groomed, and the spotlight of attention is always on them."

"To get the full effect of personality everything must heighten, everything must flatter us to our very finger tips."

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle.

"I take along a Cutex manicure kit on all my tours. A bit of the Cuticle Remover and cream, applied now and then keep my shining nails ready for their cue!"

Signature ETHEL BARRYMORE

For the above permission to use and the testimonial accompanying same there was paid to Ethel Barrymore for account of respondent the sum of \$1,000.

Thereafter respondent caused to be inserted and circulated in the Delineator for February, 1930, Ladies' Home Journal for February, 1930, McCall's for March, 1930, Pictorial Review for April, 1930, a reproduction of a picture of Miss Barrymore, together with the following statement:

Ethel Barrymore, the best loved actress on the American stage says: "To get the full effect of personality, everything must flatter us to our very finger tips."

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle. I take along a Cutex manicure set on all my tours."

On October 22, 1928, respondent caused to be obtained through its advertising agency, J. Walter Thompson Co., from Anna Pavlowa the following permission and statement:

LONDON, W. C. 2 BUSH HOUSE, ALDWYCH

October 22nd, 1928.

I hereby give the Northam Warren Corp. permission to use in its advertising, my photograph, and/or my name, and/or the following statement or any part thereof.

I agree not to indorse any other manicuring product for a period of three years and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

"MY HANDS TOO MUST DANCE"

"It helps to give my hands sparkle and vivacity. I always use it to 'make up' my hands, to keep each fingernail shining, looking truly *soigné*. Indeed, it is used a great deal in Paris—the French women know how it flatters and improves the fingertips. All the Cutex preparations are needed, however, to make the hand ready for this brilliant finish, Cuticle Remover and Cream to keep the oval smoothly rounded and the under nail tips immaculately clean."

Signature ANNA PAVLOWA

For the above permission to use and the testimonial accompanying same there was paid to Anna Pavlowa for the account of respondent the sum of one hundred pounds. Thereafter, respondent caused to be inserted and circulated in the Woman's Home Companion of May, 1930, Ladies' Home Journal for May, 1930, Canadian Home Journal

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for May, 1930, a reproduction of a picture of Anna Pavlowa, together with the following statement:

ANNA PAVLOVA TAKES THE MOST EXQUISITE CARE
OF HER GRACEFUL HANDS

"Cutex Liquid Polish helps to give my hands sparkle and vivacity. I always use it. All the Cutex preparations are needed, however, to make the hand ready for this brilliant finish. Cuticle Remover and Cream to keep the ovals rounded and the tips immaculate."

Under date of July 2, 1929, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Atlanta Arlen, the wife of Michael Arlen, the novelist, and formerly Atlanta Mercati, the following permission:

Date, July 2, 1929

Address, Mayfair Hotel

City, London W 1

I hereby give the Northam Warren Corp. and/or the J. Walter Thompson Co. permission to use in the advertising of Cutex, my photograph, and/or my name, and a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manicuring product, and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature ATLANTA ARLEN

Signature ATLANTA MERCATI

Also under date of July 2, 1929, the said Atlanta Arlen gave the following authorization:

Date, July 2, 1929

Address, Mayfair Hotel

City, London W 1

In connection with the agreement with the Northam Warren Corp. and/or the J. Walter Thompson Co. signed by me on July 2, 1929, I authorize the use for advertising of the following statement and/or any part thereof, or of one similar to it:

"I just can't excuse ill-kept hands. They can *make* or *ruin* a person's appearance! And with the Cutex preparations it is so simple to keep them always lovely! Your new Perfumed Cutex Liquid Polish has revolutionized the manicure! Its delicate lingering fragrance and flattering radiance is *too* intriguing. There are just *three* simple steps—*First*, Cutex Cuticle Remover—to remove dead cuticle bringing out the half-moons, and to whiten the nail tips—*Second*, the Perfumed Polish Remover to remove the old polish, followed by the beguiling Perfumed Cutex Liquid Polish that glistens brightly for a week—the delicate odor makes it so delightful to use—*Third*, Cutex Cuticle Cream or Oil applied around the cuticle to keep it soft and under the nail tip to keep it smooth!"

Signature ATLANTA ARLEN

Signature ATLANTA MERCATI

For the above permission to use, and the testimonial accompanying same, there was paid to Atlanta Arlen for account of respondent the sum of two hundred pounds. Thereafter, respondent caused to be

inserted and circulated in the Women's Home Companion for February, 1930, Delineator for January, 1930, McCall's for February, 1930, Canadian Home Journal for February, 1930, a reproduction of a picture of Mrs. Michael Arlen, together with the following statement:

I am devoted to your new Cutex Liquid Polish. For days and days after using it my nails are delightful. And with so little effort. The Cutex preparations certainly have simplified my manicure.

Under date of March 5, 1929, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Nancy Palmer Christy, the wife of the noted artist, Howard Chandler Christy, the following permission:

Date, March 5-29
Address, 1 W 67
City, New York

I hereby give the Northam Warren Corp. permission to use in its advertising, my photograph and/or my name, and/or a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manicuring product and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature NANCY PALMER CHRISTY
 Signature Mrs. HOWARD CHANDLER CHRISTY.

Under date of April 1, 1929, the said Nancy Palmer Christy gave the following authorization:

Date, April 1, 1929
Address, 1 West 67 Street
City, N. Y. C.

In connection with the agreement with the Northam Warren Corp. signed by me on April 1, 1929, I authorize for use for advertising the following statement and/or any part thereof; or one similar to it:

The new Perfumed Cutex Polish is so flattering.

I am delighted with the brilliance and delicate fragrance of this new polish. It is a charming idea—a polish that also gives the finger tips an evanescent fragrance. I know my hands are one of my best points and I am careful of them. Before I use the new Perfumed Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cuticle Remover. Then the Liquid Polish which lasts days and days by the way. After that a bit of the Cuticle Cream or Oil to feed the cuticle and my hands can meet even my husband's critical artist's eye.

Signature NANCY PALMER CHRISTY
 Signature Mrs. HOWARD CHANDLER CHRISTY.

For the above permission to use and the testimonials accompanying same, there was paid to Nancy Palmer Christy for account of respondent the sum of \$500, and there was also paid to Miss Lassie Honeyman, a personal friend of Mrs. Christy, for services in helping to secure the said testimonial from Mrs. Christy, the sum of \$150.

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Thereafter, respondent caused to be inserted in McCall's Magazine for April, 1930, Women's Home Companion for April, 1930, Canadian Home Journal, for April, 1930, a reproduction of a picture of Mrs. Howard Chandler Christy, together with the following statement:

The new Cutex Liquid Polish is so flattering. I am delighted with the brilliance it gives my nails. I am very careful of my hands—so I am faithful to my Cutex. Before I use the new Cutex Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cutex Cuticle Remover.

Then the Liquid Polish which lasts for days and days. After that, a bit of Cutex Cream or oil to feed the cuticle and my hands can meet even my husband's critical artist's eye.

The advertising of respondent appearing as above stated in the several magazines circulated in and among the various States of the United States containing the photographs, names and testimonials secured as stated herein through the payment of sums of money to Ethel Barrymore, Anna Pavlowa, Atlanta Arlen, and Nancy Palmer Christy, does not disclose the fact that the respondent had paid said persons for said testimonials. Among the active competitors of respondent there are those who do not use testimonials which are paid for or any testimonials at all in the advertising of said competitive products. Failure to disclose the fact that the respondent paid substantial sums of money to the persons named herein for the testimonials by said persons concerning respondent's Cutex preparations has the capacity and tendency to mislead and deceive the ultimate purchasers of said preparations into the erroneous belief that said testimonials are entirely voluntary and unbought, and tends to and does divert trade from competitors who do not use purchased testimonials in advertising their products.

PAR. 4. There is no proof that the expressions of opinion of and concerning the Cutex products contained in the testimonials appearing in paragraph 3 hereof were not true expressions of the views of the respective persons from whom said testimonials were obtained, and the only one of said persons who testified, namely, Nancy Palmer Christy, said that the statement or testimonial appearing in the aforesaid magazines over her signature was and is a correct statement of her views concerning the said Cutex preparations. The respondent discontinued the use of paid testimonials after May, 1930, and has used none since.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice and injury of the public and respondent's competitors, and are

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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 on the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and briefs and argument of counsel in support of complaint and in opposition thereto and the Commission having made its findings as to the facts, with its conclusion that the respondent has 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 the respondent, Northam Warren Corp., a corporation, its officers, representatives, agents, servants, and employees, cease and desist in connection with the sale and distribution of toilet articles and toilet preparations in interstate commerce—

From the use, or authorizing the use by others, in advertising or otherwise, of testimonials or indorsements of its toilet articles and toilet preparations, for which said testimonials and indorsements respondent has paid substantial sums of money, without disclosing the fact that respondent has paid substantial sums of money therefor.

It is further ordered, That the respondent, Northam Warren Corp., within 30 days after the date of service upon it of this order shall file with the Commission, a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

C. ARLINGTON BARNES

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1981. Complaint, Oct. 20, 1931—Decision, Dec. 15, 1931*

Consent order requiring respondent individual to cease and desist from falsely representing, in connection with sale of jewelry made and dealt in by him, that he is a jewelry importer or importer of precious or semiprecious stones, or will give free, upon payment of 25 cents for packing and shipping charges, new ring in exchange for any made and sold by him and becoming defective, as specified, "unless and until a new ring is actually given free under such circumstances, the purchaser paying only the amount required for packing and shipping."

Mr. Robert H. Winn for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that C. Arlington Barnes, an individual, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his principal office and place of business in the city of Providence in the State of Rhode Island. He is and for more than one year last past has been engaged in manufacturing various articles of jewelry and offering for sale and selling the same by mail direct to purchasers thereof located in various States of the United States. He causes the said jewelry when sold to be transported from his place of business in the State of Rhode Island into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the State of Rhode Island. In the course and conduct of his business respondent is in competition with other individuals and with corporations, firms, and partnerships engaged in the manufacture and in the sale and distribution of jewelry in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof the respondent has been and is now representing to purchasers and prospective purchasers of the jewelry manu-