

IN THE MATTER OF
INECTO, INCORPORATED

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

Docket 1452. Complaint, Apr. 6, 1927—Decision, June 20, 1932

Where a corporation engaged in manufacture and sale of a hair dye, which was (1) professedly based on a patent which set forth "Para" or "Paraphenylene diamine," the so-called "Criminal Ingredient," as a component part of "the best example" of the dye in question, and was (2) disclosed by analyses as based principally on the amino compound paratoluylene diamine, the toxic, poisonous, and harmful effects of which were similar to those caused by amino compound paraphenylene diamine; in offering and selling aforesaid dye, which it extensively advertised in women's and other periodicals and in circulars and other trade literature, to the purchasing and consuming public throughout the United States, through drug stores, department stores and other dealers, beauty parlors and hair dressing establishments, and direct by mail order for home use,

- (a) Featured and stressed in aforesaid advertisements the alleged natural and effective action of said dye in performing its function, and the long desired safe and harmless qualities, and results, thereof, and welcome absence therefrom of "Para," dangers of which it set forth and emphasized, or of any other poisonous or injurious ingredient, and resulting advantages to hair dressers, who were thereby relieved of necessity for the common "behind the ear" test, and danger of suits or difficulties attendant upon use of other dyes not so safely compounded, and represented aforesaid asserted safety as demonstrated by thousands of sales, from none of which had there been adverse effects or claims against the company through which it insured its dealers; facts being preparation in question was dangerously toxic, and poisonous, contained a toxic dye base and poisonous and injurious ingredients, was neither safe nor harmless, and had led to serious ailments and difficulties for users in a great many instances, reported from time to time to it and aforesaid insuring company, and to numerous claims against the latter; and
- (b) Featured trade or brand name "Notox" in sale, labels, and advertisement of its aforesaid product, together with such statements as "No Para—No Toxins—Notox", "Notox is safe", "Notox is non-toxic", "No element of chance in Notox", "Non-toxic dye base", "Safe because * * * free of paraphenylene diamine", and falsely represented said name, "suggested by the words, non-toxic" as proven an appropriate selection by hundreds of thousands of successful and safe applications, and advertised same to women as "a symbol of safety";

With capacity and tendency to lead public to believe dye in question to be a nontoxic or nonpoisonous and therefore safe and harmless hair dye, and to induce purchase and resale and/or use in reliance upon such erroneous belief, and upon the truth of the aforesaid various representations, and with result of increasing its sales at the expense of competitive products through thus taking advantage of public's preference for nontoxic, safe,

Complaint

and harmless hair dyes, and urging hair dressing and beauty shop customers to profit by its aforesaid nation-wide advertising, and asserted dominance of its product in field concerned, and featured, supposed safety thereof, which its said customers were requested to stress; and

- (c) Set forth in booklets circulated among customers and prospective customers, the purported text of some 50 letters or parts thereof praising and commending product in question and results of application thereof, and purported to offer, upon cover of said booklet, a large reward for anyone proving any of supposed testimonials unauthentic or unsolicited, facts being some 48 thereof were in existence prior to time it began business and sale of its said product, and had been published verbatim as tributes to its predecessor's dye and as unsolicited letters on file in said predecessor's office, and did not pertain to its own product, which it distinguished from the other as free of the "Para" contained by the latter;

With capacity and tendency to mislead and deceive purchasing public into believing said testimonials to be genuine and unsolicited indorsements of its product, and with effect of injuring public and unfairly diverting trade from its competitors and otherwise injuring and prejudicing them in their business, and operating as an unfair competitive advantage to it and a detriment to and burden upon the legitimate hair dyeing manufacturing and marketing industry:

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

Mr. Henry Miller and Mr. Richard P. Whiteley for the Commission.

Hulbert & Heermance, 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 Delaware corporation engaged in the manufacture of a hair dye by it named and designated "Inecto Rapid Notox", and in the sale and distribution thereof to wholesale and retail dealers, owners, and operators of hair dressing establishments, and the consuming public, with advertising falsely or misleadingly as to said product and indorsement thereof, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about three years last past has caused to be set forth many false and misleading statements and representations concerning its aforesaid product in its advertisements in trade journals, magazines, periodicals, and other publications of general circulation among wholesale and retail dealers, the hair-dressing trade, and the consuming public, and in pamphlets, leaflets, booklets,

Findings

16 F. T. C.

letters, and other trade literature and correspondence sent to customers and prospective customers among the aforesaid classes, to the effect, among other things, that—

The dyeing and coloring content of the dye in question penetrates the hair and thereby causes a permanent coloration;

Prominent and well known hair-dressing establishments in the United States use said dye exclusively;

Said dye is safe and harmless and, when applied, produces no harmful effect upon the scalp, fact being it frequently causes irritation, toxic poisoning, and other deleterious effects upon the scalp.

Many thousand applications of its dye have been made to the hair, without in any instances causing any harmful effect to the scalp.

Respondent further, as charged, sends to prospective customers certain booklets containing the text of purported letters praising and commending its dye and the results of its application, and represents said letters as unsolicited testimonials of customers, facts being letters were not such unsolicited testimonials, or written to it.

Aforesaid false and misleading statements and representations, as alleged, "have the capacity and tendency to and do cause many of aforesaid dealers and practitioners to deal in, use and dispense, and many of the consuming public to purchase and use, respondent's said dye in the belief that said statements and representations are true," and said acts and practices, as charged, "tend to and do divert business from and otherwise injure and prejudice" competitors, many of whom "in nowise misrepresent the nature, properties, and characteristics of the hair dyes sold and distributed by them in interstate commerce"; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on April 6, 1927, issued and thereupon served its complaint in this proceeding upon Inecto, Inc., respondent above named, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and filed its answer to said complaint by which answer respondent denied the charges

excepting certain parts of the complaint, including all of paragraph 1 thereof, which are expressly admitted by respondent. Thereafter the proceeding being ready for the taking of evidence, hearings therefor were held before an examiner of the Commission thereunto duly appointed. At such hearings oral testimony and other evidence with respect to the charges in the complaint were introduced by counsel for the Commission through many witnesses including officers or employees of respondent. Respondent was present and represented at all such hearings by counsel, cross examined the witnesses and developed oral testimony and introduced documentary evidence on its behalf. Upon completion of the introduction of evidence in chief by counsel for the Commission, further opportunity was afforded respondent for the introduction of such evidence as it might desire to present in the proceeding, and hearings before the examiner were duly held for such purposes at the expiration of certain continuances granted by the examiner and the Commission upon respondent's request. Prior to the conclusion of the hearings for the taking of evidence before the examiner various matters were presented by respondent and ruled upon by the Commission in the several respects shown in the record. Such questions were, in the main, raised by appeals by respondent to the Commission from rulings of the examiner (a) in granting motion to strike out as immaterial, incompetent, and impertinent to the complaint paragraphs 9 to 27, inclusive, of respondent's answer; (b) in receiving in evidence over respondent's objection and refusing to strike out certain documents and other evidence introduced by counsel for the Commission; (c) in directing witnesses Evans and Morgan, respondent's technical director and chemist, respectively, to testify as to the ingredients or contents of respondent's hair dye; (d) in refusing to recommend to the Commission that the complaint or any part thereof be dismissed; and also by motion of respondent to the Commission to dismiss the complaint.

Thereafter further opportunity was afforded respondent for the introduction of such evidence as it desired to offer in the proceedings and to this end a further session of the hearings before the examiner was held in New York City, July 21, 1931, at which hearing respondent appeared by counsel and thereupon rested. The introduction of evidence having been concluded, such hearings before the examiner were closed; and the evidence, including a transcript of the testimony, was filed of record in the office of the Commission. Thereafter the examiner filed his report upon the facts to which exceptions were entered by counsel for the Commission and counsel for the respondent.

Findings

16 F. T. C.

Thereupon this proceeding came on for final hearing before the Commission, and briefs and oral argument were presented to the Commission by counsel for the Commission and by counsel for the respondent; and the Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Delaware with its office and place of business in the City and State of New York. At all times since the issuance of the complaint herein and for the period of about three years immediately prior thereto, respondent has engaged and still engages in the business of manufacturing hair dye, which is named, designated, described, and branded by it as "Inecto Rapid Notox" (also commonly referred to merely as "Inecto" or as "Notox") and in the business of selling and distributing such brand of hair dye to the purchasing and consuming public throughout the United States, including wholesale and retail dealers, owners and operators of hair-dressing establishments and users located and residing respectively at places in various States of the United States. Said sales of the product are and have been made by respondent (a) to drug stores, department stores, and other dealers for resale by them to the using and consuming public; (b) to beauty parlors or shops and hair-dressing parlors for use in dyeing or tinting the hair of the patrons of such establishments and for resale by them to the consuming public for home use; and (c) direct to the using and consuming public by mail order for home use. In such distribution of said hair dye and in making delivery thereof to its customers pursuant to sales, respondent has caused throughout the course of such business and still causes said product as and when sold to be transported and delivered in commerce from its place of business in the City and State of New York into and through other States of the United States to the respective purchasers thereof in such other States. In carrying on said business respondent is and has been engaged in interstate commerce and at all times mentioned has continuously maintained a current of commerce between and among the several States in the sale and distribution of its said hair dye. There are many different brands of hair dye (represented by respondent as being hundreds) which are manufactured and marketed by others to the purchasing and consuming public of the United States; and in the sale and distribution of respondent's

hair dye to such public, as above described, the same has been and is marketed and trade therefor solicited by respondent in general competition with other brands or makes of hair dyes. Also in and throughout the course and conduct of its said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the business of selling and distributing hair dye in commerce between and among various States of the United States.

PAR. 2. Said sale and distribution of its hair dye is and has been promoted and effected by respondent through and by means of advertising matter or trade promotional literature concerning the product and respondent's business therein, principally of the following forms: (a) Advertisements published by respondent in journals, magazines, and similar periodicals and publications of general circulation among the trade and the purchasing and consuming public throughout the United States and in various sections thereof; and (b) printed or written circulars, pamphlets, leaflets, booklets, letters, and similar communications distributed by respondent to purchasers and prospective purchasers of said dye and to the hair-dyeing and hair-dressing trade and the consuming public generally throughout the United States. Said advertising matter (also herein referred to as trade promotional literature) has been and is widely and extensively published and disseminated by respondent in promoting the sale of its said hair dye and the purchase and use of the same in the trade and by the consuming public. It has been reported or represented by respondent in the course of its business that, with respect to the advertising of said hair dye, its annual expenditures ran as high as \$300,000, and that advertisements of the dye reached as many as twenty million women monthly. In the course of such advertising respondent has used as mediums for the publication and dissemination thereof practically every woman's magazine in the country, besides various trade journals, trade periodicals, and the other forms of trade promotional literature above described.

PAR. 3. In addition to the name "Inecto Rapid" respondent, during the period of about three years prior to the issuance of the complaint and at all times since, has branded and labeled its said hair dye with the word "Notox". Such brands or labels are affixed to the containers by respondent. They bear the word "Notox" printed prominently in a diamond-shaped device with the printed name "Inecto Rapid" framed in a larger oval-shaped device. It is under these labels that the product is marketed to the trade and consuming

Findings

16 F. T. C.

public by respondent and in turn resold by dealers to the consumers and users. In its trade promotional literature respondent also refers to and designates said dye with the word "Notox". Also in its trade promotional literature or advertising matter hereinabove described, and in promoting and effecting the sale of said hair dye to, and the purchase and use thereof by, the trade and consuming public throughout the United States, respondent has made and continued to make, during the period of about three years prior to the issuance of the complaint and thereafter, many representations, statements, and assertions of and concerning said dye, its nature, properties, and characteristics, which representations, statements, and assertions are of the following import and effect:

(1) That said hair dye is safe and harmless and when applied produces no harmful or deleterious effects upon the scalp, that in the many thousands of applications of said hair dye there have been no instances of any such harmful or deleterious effects upon the users thereof.

(2) That the said hair dye is "a coloring at all times safe"; "Notox is non-toxic"; "Notox is safe"; that the said product produces shades of human hair "so safely as to still even the least concern"; that it has "the absolute safety consumers deserve"; that "by actual mass test, it has established itself as absolutely safe"; that it is "positively safe"; that it is "perfectly safe in action"; that it is "safe for both hair and scalp"; that "there is no risk in the use of Inecto Rapid Notox"; that it eliminates "the risk of injuring a customer"; that "There is no element of chance in the Notox process of hair coloring. Its safety and efficiency are facts firmly established every day"; that "For one and most important thing, it delivers the hairdresser of the fear of poisoning a customer, with its inevitable consequences of loss of prestige and loss of money from damage suits"; that "For ages women have wanted such a coloring—one both safe and natural—but they have insisted stubbornly that it be exactly that"; that "it does not contain paraphenylenediamine or other injurious ingredient", or "any other poisonous ingredient"; that "its composition is safe"; that it has a "nontoxic dyebase"; that said Inecto Rapid Notox is the result of the respondent's making "an instantaneous dye without using a poison"; that "Notox is composed entirely of organic pigments. It contains nothing to damage either the scalp or the hair"; that it has been "proven safe by an unblemished record"; that the "magic eight-bottle Notox case is a symbol of safety to hundreds of thousands of women".

(3) Further instances of such representations, statements, and assertions made in this respect by respondent are shown by the following excerpts from its trade promotional literature:

Why risk uncertainty of shade, impermanency, injury to the health of customers, when Inecto Rapid NoToX eliminates every such chance of dissatisfaction? More than two years of scientific research and creative work in the laboratory, by one of the most highly qualified organic chemists in the country, have eliminated the element of chance from Inecto Rapid NoToX.

It is safe, it can not injure texture or growth. The ease of application enables anyone to apply it with invariable success in the privacy of her own home.

In other words, safety pays. There is a reason for this, of course. You have seen how, in "The Criminal Ingredient", poisonous hair colorings, containing paraphenylene diamine, have alarmed the women of this country and others. So there is little wonder, when they see, in Inecto Rapid NoToX advertising—which reaches 20,000,000 women every month—"It contains no paraphenylene diamine", that they insist upon this, the one natural coloring that is safe. They know it is as safe as its results are beautiful. They know it by name and they ask for it by name.

And now by actual mass test it has established itself as absolutely safe. When, out of two hundred thousand outfits consumed, the number of instances of impairment of health or hair or scalp is zero, there is no need to claim safety. The product has proven itself safe. (Com. Ex. 47, December, 1924.)¹ No Para—No Toxins—Notox * * * A little over two years ago, when Mr. Ralph L. Evans, organic chemist, undertook to create a coloring expressly for use upon the sensitive living organism of human hair, it was considered impossible to get a dye-base as effective as paraphenylene diamine—often referred to as "para". * * * One of Mr. Evans' hardest problems was to replace para with a nontoxic dye base. That he solved it successfully is found in the safety record that Inecto Rapid NoToX has established. The makers of this tint might easily and truly have prophesied this record, were prophecy and unsupported claim a part of their policy. From the formula it was virtually inevitable that perfect safety would be obtained. * * *

Now the facts have accumulated: one hundred thousand outfits of Inecto Rapid NoToX have been consumed, and the number of instances of impairment of health or hair or scalp zero. Every hairdresser using Inecto Rapid NoToX is insured against damages which might possibly be done, to the extent of \$5,000 and \$10,000. Insurance companies write insurance for no other hair-coloring. Fundamentally safe in theory, safeguarded rigidly throughout all processes of manufacture, proven safe by an unblemished record—Inecto Rapid NoToX is a coloring from which every element of chance has been eliminated, yet, which, for all that, is insured safe. (Com. Ex. 64, July, 1924.)

More than 200,000 outfits of Inecto Rapid NoToX have been consumed without a single instance of impairment of health or hair or scalp. Inecto national advertising in American magazines reaches 20,000,000 women readers every month. In the last year she has been particularly enthusiastic about Inecto colorings. There has been so much in the newspapers about the dangers hidden in hair dyes—particularly about the threat to health in a drug with a long name and a longer list of victims. Paraphenylene diamine, they call it. A quotation from the Journal of the American Medical Association designated

¹ Exhibits not published.

Findings

16 F. T. C.

paraphenylenediamine as "the most dangerous drug of all" used in beauty preparations. Then, happening upon an advertisement of Inecto Rapid NoTox in a current magazine, she saw the line: "Contains no paraphenylenediamine." It gave her a sense of security. The tint not only saved her from grayness, it protected her from being poisoned. Not only were its shades like nature's; its harmlessness was, too. (Com. Ex. 68, January, 1925.)

The public has become weary, indignant, up in arms against being poisoned by hair coloring. It demands a natural coloring, yes, but it demands at the same time a safe one. It demands a dye without disaster—such disaster as an ingredient like paraphenylenediamine so frequently inflicts. * * *

Coloring hair is becoming as common as matches, because it has become as safe. Cash in by carrying only the coloring which has accomplished this: Inecto Rapid Notox.

Inecto Rapid Notox, safe because it is free of paraphenylenediamine; proven safe by more than half a million applications. * * *

Every outfit of Inecto Rapid Notox contains: * * * A coloring proven safe by actual use in hundreds of thousands of cases. There has not been, from its use, a single serious case of impairment of hair or health or scalp. (Com. Ex. 73, July, 1925.)

* * * Notox assures naturalness and safety. This publicity is of vital interest to women who have found, or are just finding, the first sign of gray! And these women will be equally interested in your shop if you inform them that you expertly apply Inecto Rapid Notox. With the public fully informed that gray hair is a disease (Canities) and that Notox is its safe corrective, it is no wonder that women are displaying such interest in it.

The properties of naturalness and safety are simple to say. But it took a score of centuries to evolve a hair coloring that had them in combination. It has been evolved now, however, and women will have no other. They insist upon it—Inecto Rapid Notox. The Inecto Rapid Notox advertising, in magazines reaching 20,000,000 women buyers, tells them. The druggist who carries Inecto Rapid Notox sells them.

At no time in the history of hair coloring have you had such an opportunity. A bit of an effort—and concentration on Notox—will win you new trade and added income from your present patrons. The great magazines are carrying the Notox message to millions. * * *

The ads point out why Notox is totally unique . . . distinctive . . . different from any other hair coloring. They explain that Notox is a Symbol of Safety—a perfected product, never-failing in its results, unmatched in its supremacy. * * *

Use these features of NoToX to increase your NoToX sales. * * *

NoToX is nontoxic. It may be used without any bothersome "behind-the-ear test." It requires no waiting for possible reaction. You can make your every sale with perfect confidence in its safety.

Does a test have to be made before application? If so, the makers of the dye know that it is sometimes poisonous. The test implies toxicity.

No Test Required. The test for safety, a procedure frequently terrifying to a patron, is not necessary in applying Inecto Rapid Notox. The tint is safe—and, without a test, insured safe.

DISCARD THE TEST THAT TERRIFIES

* * * Take a look at some of the policies covering para dyes. Then take a look at an Inecto Rapid Notox insurance policy—to which every user of Inecto

Rapid Notox is entitled, free of charge. You'll find no catch clause calling for a test before application. Inecto Rapid Notox needs no test. It's safe. Its makers don't ask the hairdresser to experiment with her customers. They know, just as you know, that you can't hold a patron's confidence if you experiment upon her, as you would on a guinea pig.

INECTO RAPID NOTOX IS SAFE

More than a million applications without mishap have proven it safe. Inecto Rapid Notox contains no paraphenylene diamine. Inecto Rapid Notox is so safe that, when it is used exclusively, the insurance on the entire shop is reduced 15 per cent. Insurance on Inecto Rapid Notox costs the shop nothing. Every package is insured under a blanket policy by Inecto, Inc., through the United States Guaranty & Fidelity Co. Insurance companies do not require, in insuring anyone using Inecto Rapid Notox, that there be a preliminary test upon a customer. With certain other colorings, unless a test is made, insurance is voided. And if a test is made the customer usually is badly frightened by it.

The United States Fidelity and Guaranty Co. which insures all users of Inecto Rapid Notox, has yet to have occasion to pay damages for any injury resulting from an application of this hair coloring. Naturally, the reason for this is that there have been no injuries. Inecto Rapid Notox is a safe hair coloring. Not because its makers claim it is safe—but because insurance statistics prove it so. * * * Caesar's wife, they say, is, or rather was—for the Impeccable empress is no longer with us—above suspicion. In that her reputation for virtue is exactly like that of Inecto Rapid Notox for safety.

For the United States Fidelity & Guaranty Co., which insures all hair dressers—without cost to them—using this coloring, does not require, in its policy, that there be any sort of test of the coloring by the hairdresser upon her customer.

It is not necessary—as in the case of some colorings—that first a bit of coloring be applied to a customer and left on for a while to see if any harm develops, before insurance be allowed.

That is like betting on a horse the day after a race. No such preliminary test is required of Inecto Rapid Notox. So certain, apparently, is the insurance company that nothing can happen that it doesn't bother with this requirement.

As a matter of fact, however the insurance company in not taking any considerable chances. It knows that both in formula and performance Inecto Rapid Notox is as near to being absolutely safe as any preparation used in beautifying. In the first place, Inecto Rapid Notox contains none of that substance referred to in the Journal of the American Medical Association as "the most dangerous drug of all"—paraphenylene diamine.

Again, more than one hundred thousand outfits of Inecto Rapid Notox have been consumed without a single instance of impairment of hair or health or scalp. And still again, the United States Fidelity & Guaranty Co. has never had occasion to pay one cent for any sort of injury from an Inecto Rapid Notox application. No wonder it should require no test of Inecto Rapid Notox—that it should regard its safety as did the members of the imperial Roman court the reputation of Mrs. Caesar—above suspicion. * * *

Absences then are frequently more significant than presences. Which is the reason for our emphasizing so pointedly the absence from Inecto Rapid Notox of the now disreputable and dangerous chemical, paraphenylene diamine. To-day, when organizations such as the American Medical Association, the

Findings

16 F. T. C.

American Cosmeticians' Society, and the National Hairdressers' Association have passed resolutions condemning the use of paraphenylene diamine in hair colorings and furthermore put themselves on record as urging the passage of criminal laws to prevent the use of para in such colorings, every hairdresser, realizing that such agitation must mean that para in a coloring is a real menace to her customers' health and her business prosperity, wants to know whether or not a given coloring contains para. Hairdressers know that para is frequently, unforseeably poisonous and occasionally fatally so. The one thing they insist upon about the drug is that it not be in any coloring they use. * * *

Proven safest by the fact that more than one hundred thousand outfits have been consumed without a single instance of impairment of health or hair or scalp, proven safest, too, by the statistics of the United States Fidelity & Guaranty Co.—all because Inecto Rapid Notox was designed to be safest by insisting that, of its ingredients, paraphenylene diamine be among those absent. * * *

No Para—No Toxins—Notox. (Com. Ex. 97, November, 1924.)

NO TEST FOR NOTOX

No better evidence of the safety of a hair coloring can exist than that which is provided in the insurance policy issued by the United States Fidelity & Guaranty Co., which insured every hairdresser using this coloring. This policy insures the user without requiring any preliminary test of the coloring upon a subject. The hairdresser does not first have to apply the coloring, then wait to see if anything happens before being covered by insurance. The hairdresser is insured from the start. The United States Fidelity & Guaranty Co., of course, knows what it is doing. Insurance companies are not rash chance-takers. They know Inecto Rapid Notox is Safe. Hence their *carte blanche* policy. Their "No test for Notox" insurance is final evidence that this is the safest, as well as the most beautifully effective hair coloring in the world today.

Notox is safe. It contains no paraphenylene diamine or any other poisonous ingredient. The undeniable unbiased proof of the safety of Notox is found in the fact that one of the largest indemnity companies in the world—the United States Fidelity & Guaranty Co.—lowers the insurance rate upon an entire shop if Notox is used exclusively in hair coloring work. (Com. Ex. 26, July, 1926.)

Developed by a noted organic chemist, who has forever eliminated the dangerous paraphenylene diamine, there have been 100,000 applications of Inecto Rapid NoToX and not a single case of damage to health, or hair or scalp. "It aint-a-gonna rain no more" as far as hair-dye troubles are concerned. But we still provide our distributors and every one of their customers with a good strong umbrella. Every druggist who sells Inecto Rapid NoToX and every woman who buys and uses it is insured against all possible damage by the United States Fidelity & Guaranty Co. Not a single damage claim has ever been filed in this connection—but the protection is still there just the same. * * *

The makers of Inecto Rapid Notox—or Notox, as it is beginning to be called—state that it is a safe hair coloring. They back that statement with free insurance, to the extent of \$10,000 and \$20,000. And moreover, the insurance company which issues this policy, the United States Fidelity & Guaranty Co.—one of the largest indemnity companies in the world—offers a reduction of 15 per cent in insurance rates upon the entire shop where Notox is used exclusively.

Not only are the makers of Notox so sure Notox is safe that they insure hairdressers free of charge (without testing or any other jokers tied to the contract). But an outside company, one of the greatest of its kind in the world, is so sure that Notox is safe that it puts up its own money to back its knowledge. You can't have any stronger evidence than this of the reliability or safety of any thing in the world. In choosing a hair coloring, you want to choose a safe one. One that you are absolutely sure is safe. * * *

Use Notox—the one coloring that proves to you beyond all question that it is safe—and absolutely right in quality.

Since the issuance of the first case of Inecto Rapid Notox, there has not been a single instance of injury to health or hair or scalp reported to the United States Fidelity & Guaranty Company, which insures every hairdresser using this tint. * * *

Safety, of course, was assured. The threat of "the most dangerous drug of all", paraphenylene diamine, was eliminated by evolving a nontoxic dye base. (Com. Ex. 69, March, 1925.)

The existence of such a hair coloring as Inecto Rapid Notox, perfectly safe and perfectly natural, has created a confidence in hair colorings, a confidence comparable to public confidence in paper money backed by the gold reserve in a nation's treasury. * * *

As to the claim that a dye is the same as old Inecto Rapid, the dye formerly made by Inecto, Inc., bear this in mind: Old Inecto Rapid contained paraphenylene diamine. If a dye offered as being identical to old Inecto Rapid really is identical, then it contains paraphenylene diamine. If a dye offered as old Inecto Rapid does not contain paraphenylene diamine, then it is not the same as old Inecto Rapid. If a counterfeit dye is not the same as old Inecto Rapid, then it is not as effective; if it is the same, it is poisonous.

PAR. 4. The word "Notox", in addition to the phrase "Inecto Rapid", has been used by respondent in advertising, designating, and describing its hair dye since about March, 1924. Prior thereto respondent sold its dye under the designation "Inecto Rapid" without the word "Notox". It represented in its advertising matter that said product to which it applied the word "Notox" is a new or improved hair dye developed with a nontoxic dye base. When respondent put its hair dye upon the market as such new or improved hair dye, the change was also made in the designation by applying the word "Notox" to the product and adding such word to the name "Inecto Rapid". The change on the labels under which the dye is sold was made by adding the word "Notox" printed in a diamond-shaped device with the term "Inecto Rapid" framed in a larger oval-shaped device as described in paragraph 3 hereof. In certain instances respondent has referred to said word "Notox" as a trade-mark. It has printed such word "NoToX" in some places with the letters "N", "T" and "X" as capital letters and the two letters "o" as noncapital or lower case letters; and has designated the word so printed with the term trade-mark. In promoting the sale of such

"Inecto Rapid Notox" dye, respondent advertised and represented that—

The name NoToX is suggested by the words, non-toxic. And hundreds of thousands of applications prove that it is appropriately named. (Com. Ex. 28.)

As set forth in paragraph 3 hereof respondent also printed conspicuously such catch words as "No Para—No Toxins—Notox", "Notox is non-toxic"; and referred to the product designated "Notox" as the "Symbol of Safety", stating that its advertisements to women "explain that Notox is a *Symbol of Safety*—a perfected product, never-failing in its results, unmatched in its supremacy . . ." (Underscoring has been supplied to show part italicized. Com. Ex. 56.) In respondent's so-called text-book entitled "Canities", authorized, used, and sold by respondent for teaching hair-dressers or beauty parlor operators information concerning its "Inecto Rapid Notox" brand of hair dye and the use and application thereof, representations, written by the author on behalf of respondent, are set forth as to the origin and development of said dye by Ralph L. Evans with the statement that—

Finally, in March, 1924, Dr. Evans formally presented to the public the new preparation called "NoToX" (from "non-toxic", or nonpoisonous).

In oral testimony adduced with respect to the meaning of said word "Notox" as used, a chemist of the United States Department of Agriculture testified that to him the word conveys the impression that "it has no toxic properties"; "that it is harmless" and that to his knowledge the word "tox" is not used in chemistry. Another witness, a physician and chemist formerly employed by the United States Department of Agriculture in the matter of the enforcement of the Food and Drugs Act and now secretary of the U. S. Pharmacopoeia Convention, testified that the word "Notox" to him means nonpoisonous; that the term "tox" is "the root of many words. That means toxic", and he cited the words "toxic", "toxalbumen", "toxicology", "toxemia", and the word "toxitablet" in the U. S. Pharmacopoeia, which he testified means poison tablet; also that the term "tox" is generally considered synonymous with poison. A third witness, a practicing physician, specialist in skin diseases and professor of dermatology, testified that said word "Notox" to his means "nontoxic or nonpoisonous"; that "tox, I think, is a very frequent abbreviation of toxic and toxic means poisonous", and that it is "quite generally used as a prefix or suffix to words to indicate poison or non poison".

Upon consideration of all the evidence in the matter and the record, the Commission finds that the word "Notox" as used and

applied by respondent in designating, describing, and advertising its said hair dye, as above set forth, is indicative of nontoxic or nonpoisonous and has a capacity and tendency to lead the public to believe, and constitutes a representation to the effect, that said hair dye is nontoxic or nonpoisonous, and is therefore, a safe and harmless hair dye.

PAR. 5. Respondent's said Inecto Rapid Notox brand of hair dye is sold in small bottles or vials to be used in pairs consisting of one bottle marked A and one bottle marked B. The usual package in which it is marketed is a small sealed case or carton containing four pairs or a total of eight bottles or vials. The product was advertised by respondent prior to the issuance of the complaint as retailing at \$5 for each such case or carton of eight bottles with an advertised price of \$36 per dozen cases or cartons to retailers. The A bottles contain the dye stuff and the B bottles contain hydrogen peroxide, the purpose of which is to act as an oxidizing agent when mixed with the contents of the A bottle, which admixture is to be made when applying the product to the hair. In the mixture of the contents of the A bottle with the peroxide in the B bottle and the application thereof to the hair, oxidation takes place, and as a result of the chemical reaction thus set up, the tint or color is formed upon the hair. In the matter of the ingredients in the contents of the A bottles, Commission witness Ralph L. Evans, respondent's technical director who is represented in respondent's literature as the chemist that developed said dye, and William E. Morgan, another chemist employed by respondent, refused, upon advice of respondent's counsel, to testify in response to questions as to whether it contained certain ingredients. With respect to the nature and the alleged unsafe, harmful and deleterious character of said dye and its ingredients, and the harmful and deleterious effects in the use thereof, much evidence was adduced among which is testimony or other evidence of the following character:

(a) That in addition to respondent's representing in its advertising matter that its said Inecto Rapid Notox hair dye contained no paraphenylene diamine or any poisonous or injurious ingredient, respondent also made representations therein to the effect that respondent's said dye was invented and is a patented product, fully covered by letters patent; that it is a discovery of or was invented by said Ralph L. Evans, respondent's technical director in charge of the production of said dye. He testified that United States letters patent No. 1497262 (in the record as Com. Ex. No. 1 and in which he is the patentee) are the only letters patent covering said

Inecto Rapid Notox hair dye as sold by the respondent in the United States. Said letters patent are for "an alleged new and useful improvement in hair dye" and were granted June 10, 1924, upon application of said Evans, filed February 24, 1923, Serial No. 621032. The product, as covered in said letters patent and specified therein by the applicant Ralph L. Evans, is a hair dye having as its base amino compounds such as paraphenylene diamine and described in part as follows:

The following is the best example of my improved hair dye which I have produced with the proportions given by weight.

I dissolve 1 to 5 parts of para phenylenediamin ($C_6H_4(NH_2)_2$) in 100 parts of water and add thereto $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite ($C_3H_7SO_3Na$) which chemically combines with the amine to form the triple compound para phenylenediamin-acetone-sodium bisulfite ($C_6H_4N_2SO_3Na$). This compound may be used for dyeing in the usual manner by the addition of a suitable oxidizing agent, such as hydrogen peroxide.

While I have described this invention as a hair dye, it is suitable for other purposes, such as dyeing fur, feathers, etc., hence I do not wish to limit myself to a hair dye, but

What I claim is:—

1. A dye including an aromatic amino compound chemically coupled with a carbonyl containing compound of the type formula $RC:OR'$ where R and R' may be H or organic radicals connected through carbon.

2. A dye including an aromatic amino compound chemically coupled with a carbonyl containing compound of the type formula $RC:OR'$ where R and R' may be H or organic radicals connected through carbon, and a sulfur containing compound.

3. A dye including para phenylenediamin and acetone sodium bisulfite.

4. A dye including para phenylenediamin and acetone sodium bisulfite in the substantial proportions of 1 to 5 parts of para phenylenediamin and $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite.

5. A dye including water, para phenylenediamin and acetone sodium bisulfite in the substantial proportions of 100 parts of water; 1 to 5 parts of para phenylenediamin, and $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite.

(b) That in the course of its business respondent made announcements, statements, and representations, principally in bulletins and trade magazines, to the hair dye and hair-dressing trade and the public generally, to the effect that paraphenylene diamine is a dangerous and harmful substance, and when used in hair dye renders such hair dye unsafe to use and a poisonous, dangerous, and harmful product; that if a hair dye—

contains paraphenylene diamine, "The Criminal Ingredient," it will poison—whether a test is made before or not—one out of every one hundred and twenty persons. The degree of poisoning is sometimes such as to undermine the constitution. (Com. Ex. 35);

that as an ingredient in hair dye—

the drug carries always a potential injury. It is not invariably injurious, but it is occasionally and unforeseeably so. The hairdresser might use a dye containing it a hundred times without mishap, and again in another hundred cases find himself facing half a dozen damage suits for injuries inflicted by para (Com. Ex. 37).

That "free paraphenylene diamine poisons 1 out of every 120 persons. And there's no way of foretelling whom it will poison" (Com. Ex. 51); that, with respect to excerpts published from the Journal of American Medical Association, "these quotations of medical authority indicate that paraphenylene diamine is frequently poisonous, occasionally fatally so" (Com. Ex. 66); also that it is so known to hairdressers (Com. Ex. 97). In connection with or in support of its representations and declarations in this regard, respondent compiled and published quotations of what it represented to be scientific comment by medical and chemical authority upon the effect upon human beings of hair dye containing paraphenylene diamine. The general tenor of such quotations is shown by the following excerpts:

Paraphenylene diamine is a spasmodic poison and can kill.

Pyrogallol, silver nitrate, and paraphenylene diamine cause skin eruptions.

Paraphenylene diamine finds application in the use of prepared hair dyes, especially fur dyes. In the dyeing of human hair it is forbidden because of its poisonous properties (Max Scholtz-Grieswald Univ. Textbook of Pharmaceutical Chemistry Vol. 11, p. 275).

Paraphenylene diamine is a strong poison and ought not to be used in hair dyes.

A single application of paraphenylene diamine has been enough for action. Symptoms may be divided into three groups:

1. Toxic skin eruptions, eczema, urticaria, burning and itching; 2. Gastrointestinal troubles, such as nausea; 3. Nervous disorders, dizziness, sleeplessness, weakness of the legs, epileptiform attacks and syncope.

In individuals the manifestations on the skin are numerous: In violently itching red spots, edematous swellings, inflammation of the skin with cracking, pimples and ulcers, blisters, nettle disease (which can be merely local or can spread over a large part of the body), swelling of the face, especially the eyelids, flowing of tears, and swelling of the larynx have often been observed. The eruption of the skin often takes a characteristic stream form of spreading.

Above all, paraphenylene diamine and its analogs are worthy of mention . . . As paraphenylene diamine irritates the skin and is even poisonous, its use in hair dye is forbidden (Hans Truttwin, Handbook of Cosmetic Chemistry, Leipzig. Dr. Ewald Fonrobert, Wiesbaden, Chap. XV, Hydrogen in Cosmetics).

A fact of considerable importance is that such a poisonous substance (hair dye) is likely to be given into the hands of the laity, with assurances of complete freedom from harmful effects, and the use of such a substance makes contact with the hair and skin unavoidable. (Com. Ex. 41.)

Findings

16 F. T. C.

(c) That respondent compiled and published in the course of its hair-dye business purported specific instances, from reported authentic sources, of injuries or illnesses as "A few representative cases of paraphenylene diamine poisoning resulting from the use of hair dyes containing that chemical," and involving such difficulties as dermatitis, the undergoing of medical and hospital treatments for varying periods, incapacity, prolonged illness, loss of hair, closing of eyes or impairment of eyesight, lowered resistance, nervousness, irritated and blistered scalp, swelling of the head, infected scalp, infection which has spread to other parts of the body. Respondent also compiled and similarly used in its hair-dye business what it represented to be "A list of American hairdressing shops whose use of coloring containing paraphenylene diamine has brought on suits for damages," and purporting to be a list of over 300 reported specific instances or cases which have arisen of alleged injuries or deleterious effects suffered by patrons or users of hair dye containing such amino compound paraphenylene diamine.

(d) Testimony as to the character of respondent's "Inecto Rapid Notox" brand of hair dye and its ingredients was also adduced through several analytical experts who at different times made chemical analyses of a number of packages or samples of said product and performed tests or experiments therewith. They testified to having found the product upon analyses to be a hair dye with a base of amino compounds identified by them principally as the amino compound paratoluylene diamine from which coloring or tinting properties of said dye are derived; and to the effect that such base of amino compounds is toxic and that the dye is a toxic and a harmful or deleterious product.

Also, in the expert evidence, which was largely adduced through various chemists and physicians, is testimony to the effect that the amino compounds in said hair dye render the same toxic, harmful or deleterious, and that such amino compound dyes are toxic, harmful or deleterious regardless of whether the amino compound may be present or introduced in the product as paratoluylene diamine or paraphenylene diamine; that the diamines or amino compounds paraphenylene diamine and paratoluylene diamine are substantially similar coal tar derivatives and closely related color producing substances which depend upon the oxidation of their amino or NH_2 groups (present in both) for the production of color; that they have long been known to the medical and chemical profession as substances which are inherently toxic and poisonous, and productive of toxic and harmful or deleterious effects; that when used in hair dye such as respondent's are productive of similar toxic conditions and

deleterious or harmful effects upon the scalp and other parts of the body of the users of the dye, such as dermatitis, rash, skin irritation or inflammation of the scalp and subsequent spreading thereof to other parts of the body, blisters, vesiculation or the formation of blebs or vesicles with oozing, erythema, swelling and with possible development of other illnesses through absorption into the blood; that the dye manufactured in accordance with said Evans' patent (Com. Ex. 1) would be toxic and harmful or deleterious principally because of the presence therein of the amino compounds from which tinting or coloring properties of the dye are derived; that no ingredients as specified or found in respondent's said dye have the effect of eliminating or removing, nor is it possible to eliminate or remove the toxic or deleterious properties of the amino compounds in said dye without destroying their coloring properties for which such compounds are used.

While testimony was adduced to the effect that both paraphenylene diamine and paratoluylylene diamine as ingredients in such hair dyes are toxic, poisonous and harmful and produce similar harmful effects, some testimony was also adduced to the effect that in comparison paratoluylylene diamine is less toxic than paraphenylene diamine. Testimony was given by one of the analytical chemists that upon a determination or test which he made of the relative toxicity of respondent's product in comparison with a known paraphenylene diamine hair dye he found and such test revealed respondent's product to be the more toxic in the proportion of 78 to 57.6, the amino compound in the sample of respondent's dye being 3 per cent paratoluylylene diamine and the amino compound of the other dye being 1.92 per cent paraphenylene diamine.

Said Ralph L. Evans, a chemist and respondent's technical director, testified that he had agreed that paraphenylene diamine in a hair dye is poisonous and toxic; that, as an expert in hair dye and in the performance of his duties in respondent's employment, he has gathered some evidence indicating that there is very little difference between the toxicity of paraphenylene diamine and the toxicity of paratoluylylene diamine, and other evidence to the contrary effect; that if the materials are ingested their action is probably very similar; that, however, as used in a hair dye certain physical properties of the one substance make it far less liable to be toxic because of the nature of these physical properties than the other; that as inherent substance he does not believe there is a great difference between their toxicity; that in the way they are used there may or may not be; that paratoluylylene diamine as well as paraphenylene diamine can cause dermatitis venenata. (Dermatitis venenata is dermatitis caused by a skin irritant.)

Findings

16 F. T. C.

Said witness Morgan, another of respondent's chemists, in testifying as to whether the action of paraphenylenediamine and paratoluylenediamine is identical, depending upon the oxidation of the NH_2 groups (the amino groups) into amids and the subsequent intercombination of the diimid compound in the amino base to the formation of a complex structure, which is the precipitated color, stated he would not say identical, but that their actions are analogous, "that is to say, they follow an approximately parallel course, passing through corresponding intermediate stages, and possibly arriving at corresponding end products". He further testified that, to his understanding, in the oxidation of paraphenylenediamine and of paratoluylenediamine intermediate products are formed, which intermediate products are known as quinone diimids and that he would expect such quinone diimids to be skin irritants; that there are statements in the literature of the opinion of other chemists that they have such an effect and that he has very great confidence in such literature; and also that his views are based upon professional literature pertaining to the profession of chemistry. He also testified that he does not think the toxicity of paraphenylenediamine and of paratoluylenediamine is due to the quinone diimids which are formed when the substances are exposed to the oxidizing agent, but that as to what their toxicity is due to involves "a mechanism for toxicity" which he is incompetent to give or explain.

From other witnesses evidence was also adduced tending to show that upon chemical analyses of certain samples of respondent's hair dye resorcin and pyrogallol (pyrogallic acid) were present in such samples of the product; that said substances are poisons and skin irritants and that their use in said hair dye would have a tendency to increase or augment the toxic or irritating properties of said dye. Respondent's said technical director and employee Ralph L. Evans, as a witness, refused upon advice of respondent's counsel to testify in response to questions as to whether its said dye contains pyrogallic acid or resorcin. Similar refusal to testify as to whether the dye contained paratoluylenediamine was made by said witness Morgan upon advice of respondent's counsel.

(e) Evidence was introduced at hearings held in New York City, Pittsburgh, Pa., Cleveland and Cincinnati, Ohio, in proof of a substantial number of specific cases of injury or deleterious effects sustained by users and consumers of respondent's said hair dye. Such evidence related to about twenty specific instances, embracing instances where the application of the dye in question was made in beauty parlors or hair-dressing establishments and in the home; also two instances where the dye was applied in demonstrations of its

use, one in respondent's place of business and another under the direction of a person employed by respondent. The witnesses embraced such classes as (1) persons sustaining the alleged injuries attendant upon the application of the dye; (2) attending physicians and medical specialists who treated certain of the cases; and (3) beauty shop operators or hairdressers by whom or in whose establishments the dye was applied in certain instances.

In the evidence relating to the principal or clearest of these instances, the injuries or deleterious effects testified to as having been experienced following the use of the dye in question include the following: Dermatitis venenata from external irritant or application of substance which was toxic and poisonous to patient; dermatitis venenata covering scalp, forehead and involving eyelids with oozing from scalp; acute dermatitis of the face, skin inflammation and irritation of the scalp, face and nose, from hair dye; dermatitis of the scalp and adjacent parts, face and eyes, due to toxic substance or external irritant; development of sores on scalp and face; development of redness, inflammation or rash on the scalp and head including the forehead, face and neck; blistered and oozing scalp; inflammation of the skin and infection; inflammation of the skin due to poison or irritant substance in external application with development of pustules and infection spreading to other parts of the body; swelling of eyelids and closing of the eyes for a period; swelling of the head including scalp, neck, and face, and of the hands, fingers, and body; burning or itching of the scalp and face; swollen and edematous forehead; edematous and swollen scalp, forehead and neck; toxic absorption extending downward over the face, back, and arms, followed by acute nephritis, Bright's disease and anemia.

In various instances medical and hospital treatments were given for the difficulties extending over periods of a few days to several weeks. In one case, not included in the above, the user purchased the dye from respondent in New York with which she undertook to dye her own hair at home. She did not make an admixture of the contents of the pair of bottles as per instructions but applied first the solution in the one and then the solution in the other bottle. She testified that beginning within an hour her head began to swell and following this her eyes became closed, rash developed on scalp, head became a mass of sores and her entire body swelled and turned red. Treatments by her own physician were begun the next morning following the application of the dye and were continued over a period of several weeks.

(f) Evidence was also adduced as to cases having been reported to respondent from time to time of alleged injuries or deleterious effects

Findings

16 F. T. C.

upon users or consumers of its dye; and also with respect to a number of (some hundred or more) such casualty insurance claims as having arisen subsequent to March 1, 1924, and particularly during the remainder of 1924 and the years 1925, 1926, and 1927, and having been reported by respondent to or handled by the United States Fidelity & Guaranty Co., being the company represented by respondent as carrying the liability insurance which respondent had provided to cover dealers, beauty parlors, and hairdressers against liability for damages, to the extent of \$5,000 and \$10,000 (later \$10,000 and \$20,000), resulting to their patrons or customers in the use of said "Inecto Rapid Notox" brand of dye.

(g) Testimony was also given as to the estimated number of packages or applications of respondent's said dye purchased or used by operators of certain beauty parlors and chains of beauty parlors who had reported complaints or claims of injuries or deleterious effects resulting from said dye to certain named patrons of such beauty parlors. Evidence was also elicited tending to show that there are human beings who may be subject to idiosyncrasies and are more susceptible than others of being poisoned, or of suffering deleterious effects. Such evidence was principally introduced upon cross-examination by counsel for respondent, and in considering the matter this as well as all evidence in the record introduced or developed by respondent has been taken into account.

The Commission finds, upon consideration of the entire record, that respondent's said hair dye, which it designated "Inecto Rapid Notox" and described, represented, and advertised as hereinabove set forth, is a dangerously toxic, deleterious and harmful product containing a toxic dye-base and toxic, poisonous and injurious ingredients or properties; that in its use and application to dyeing or coloring of the human hair it is not safe or harmless; that said product when used for the dyeing of the hair can and is apt to cause toxic, deleterious and harmful physical effects upon the scalp and other parts of the body of the users thereof, and in many instances has produced and caused such toxic, deleterious and harmful physical effects upon users, including irritation and toxic poisoning of the scalp; that instances or cases of such injuries and alleged injuries have from time to time been reported to respondent and to said United States Fidelity & Guaranty Co.

PAR. 6. The representations, statements, and assertions used by respondent in the sale and distribution of its said hair dye to the effect that said product is nontoxic, nonpoisonous, safe and harmless, and when applied produces no harmful or deleterious effects upon the body or scalp, contains no poisonous or injurious ingredients,

will not result in and has not caused or produced any deleterious effects in its use and application, and that no such cases of harmful or deleterious effects have arisen or been reported, all as more particularly described hereinabove, are and have been false, misleading and deceptive and they have and had the capacity and tendency to mislead, deceive and induce the purchasing public into purchasing, using or reselling said product in the erroneous belief that such representations are and were true. Respondent's use of the word "Notox" in connection with its said hair dye as hereinabove described is likewise false, misleading and deceptive in that said dye is not a nontoxic, nonpoisonous or harmless product.

PAR. 7. Respondent in the course and conduct of said business represented that certain well known hair-dressing establishments used its said "Inecto Rapid Notox" dye exclusively, and that "the Marinello Co. which supplies 5,000 beauty parlors," used said product exclusively. Evidence has been introduced that the operators of two chains of beauty parlors in the United States have used respondent's said hair dye exclusively. Evidence was also adduced tending to show that at the time said representation was made with respect to the Marinello Co. such company did not use respondent's hair dye exclusively but also used in its business a competing hair dye. However, upon consideration of all the evidence the Commission finds that respondent's representation to the effect that well known hair-dressing establishments in the United States used its dye exclusively was not untrue in fact.

PAR. 8. In the course and conduct of its business respondent has solicited trade for its said hair dye and promoted the sale and use thereof to the purchasing public upon representations to the effect that the dyeing and coloring content of said product penetrates the hair thereby causing a permanent coloration of the hair, and upon representations of the following tenor:

Notox is penetrating in its action. It deposits the color inside the hair shaft, where the natural pigment originally grew. It does not insulate each hair with a coating of dull paint as other dyes do. It colors hair inside, as nature does, and leaves the outside of the hair with all its healthy, youthful luster, its attractive reflections of light and shade.

Notox is permanent. Dyes that coat the hair fade to queer shades or wear off. Repeated applications of such dyes add sheath after sheath of coloring matter to the hair and therefore coarsen the hair and make it stiff and brittle. But Inecto Rapid Notox deposits the coloring inside the transparent hair shaft, and so has no effect on the texture and supple strength of the hair.

For gray hair (Canities) is caused by the degeneration of the pigment within the hair shaft. Notox replaces this pigment inside—and replaces it safely and permanently, following nature's own method. * * * It is this scientifically correct naturalness—this perfect duplication of nature's own method—that is helping the women of America to add years to their youth.

Findings

16 F. T. C.

Science calls gray hair a disease and names it "Canities". Notox furnishes the perfect corrective. It is useless to try to imitate nature by coloring the outside of the hair; this is what the old fashioned restorers did and why they failed. Notox places color in the layer of fibres underneath the outer covering of the hair—right where nature used to put its own color. By following nature it duplicates her effects.

Notox implants color inside the hair fibres, just where nature originally put her pigment.

Notox itself—a genuine miracle of science; a gentle and gloriously rich tint which duplicates the very manner of Nature in coloring hair; which diffuses through the infinitely fine inner fibres of the hair a wholesome and permanent pigment.

We tell women, "Notox colors from the inside—as nature does".

Notox colors hair inside as nature does.

Nature colors—Notox recolors—both work from inside the hair.

It replaces the lost color within the hair where it was originally.

PAR. 9. The product colors hair to the surface of the skin, but not beneath. It does not act through or upon the root end of the hair as nature does. The part of the hair beneath the surface of the skin and that which grows out after application of respondent's product is not colored or tinted as a result of the previous applications, but must be dyed or retouched as successive growths are produced if all exposed parts of the hair are to be kept colored alike. Said product does not color the hair permanently in the sense that successive applications or retouching need not be resorted to as the hair continues to grow from the scalp. In the evidence adduced with respect to this subject is testimony by two physicians, one a chemist, tending to show that amino compound hair dyes such as respondent's do not penetrate to the inside of the hair or replace pigment on the inside at the point where the natural pigment originally existed; that the natural coloring of the hair is largely in pigment cells deep in the inside of the hair; that such hair dyes merely coat or paint the outer part of the hair shaft; and that there is no dye known to the medical or chemical profession which can penetrate to the inside of the hair. Said Ralph L. Evans, of respondent, testified that the natural coloring of the hair enters the hair shaft and grows out with the shaft from the papilla or bulb; that coloring might also enter the hair shaft by direct penetration through the walls of the outer layer of the hair or the cuticle, and enter the shaft in the way that coloring enters in fibre in dyeing process.

PAR. 10. In nature everything that is within the hair, including the natural pigment or coloring, comes into it from or through the root or bulbous end of the hair that lies imbedded beneath the surface of the scalp. Respondent's hair dye does not color the hair in the

way nature originally colored it. Nor does it follow nature's method and color the hair inside as nature does. The coloring matter produced by respondent's dye is deposited upon the hair as a result of the chemical reaction which takes place when the product is applied. As to whether, however, it is a fact that in such process the dye does not penetrate into the surface of the hair at least in some degree, or whether the coloring by said dye is not substantially permanent upon such parts of the hair to which it has been successfully applied, the Commission does not find such to be established fact.

PAR. 11. In soliciting and making sales of its said Inecto Rapid Notox brand of hair dye to the consuming public as hereinabove described, respondent sent to its customers and prospective customers, as part of its aforesaid trade promotional literature, copies of a certain booklet published by it and containing what purports to be the text of some fifty letters or parts thereof praising and commending respondent's hair dye and the results of its application, and also purporting to be and used by respondent as unsolicited testimonials written by customers of respondent to respondent concerning its hair dye. The title page of said booklet reads as follows:

INECTO RAPID NOTOX

Fifty

Thousand

Dollars

will be paid

to anyone proving that any Inecto Rapid testimonial
printed in this folder is not only authentic but unsol-
icited.

Read the letters—they form the strongest and most interesting evidence of
merit ever shown for a hair coloring.

INECTO, INC.

Largest Manufacturers of Hair Coloring
in the World

LABORATORIES AND DEMONSTRATION

SALON

33-35 West 46th Street

New York

(Com. Exs. 43, 44b.)

The tenor of the purported testimonials in the booklet is illustrated
by the following selected at random:

Your product is wonderful both in the way of application, time consumed and
results itself. I shall readily recommend it to my friends.—A. E. P.

Findings

16 F. T. C.

I am greatly pleased with the results. I hope to be able to keep my hair in the natural color from this time on.—Mrs. R. H. I.

I am perfectly satisfied with Inecto. It has worked wonders. The first treatment worked like magic.—Mrs. C. R.

I wish to thank you for sending Inecto Rapid. I have used it and find it most gloriously wonderful. I will continue to use it in the future. So happy I have discovered it.—M. E.

Evidence was introduced tending to show that about forty-eight of said purported testimonials were in existence prior to the time respondent began business and also prior to the time it first placed upon the market its Inecto Rapid Notox brand of hair dye; that a list of forty-eight of said purported testimonials were published, in haec verba, by respondent's predecessor, Inecto, Inc., a New York corporation, prior to respondent's beginning business, as tributes to such predecessor's hair dye and as unsolicited letters on file in its office (Com. Ex. 124); and that such testimonials in respondent's booklet did not relate or pertain to respondent's said brand of hair dye "Inecto Rapid Notox" in promoting the sale of which said booklet was used by respondent. Said predecessor of respondent was a New York corporation having the same name and place of business as respondent, and likewise engaged in the manufacture, sale and distribution of hair dye which it marketed under the name Inecto Rapid. About August, 1923, respondent was organized as a Delaware corporation and succeeded to the business of said New York corporation which thereupon discontinued business and was dissolved.

PAR. 12. Upon consideration of the entire record the Commission finds that practically all of said testimonials published by respondent in said booklet were not unsolicited testimonials written by customers of and concerning respondent's said hair dye Inecto Rapid Notox, or sent to respondent as concerning its said brand of hair dye; and that the use by respondent of said booklet as above described was false, misleading and deceptive and had the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that said testimonials were genuine, unsolicited testimonials received by respondent from users of said dye Inecto Rapid Notox in commendation and praise of said brand of dye, which was the brand then being marketed by respondent.

PAR. 13. Hair dyes which are nontoxic or nonpoisonous, safe or harmless are in demand and preferred by consumers and hairdressers throughout the United States. The said false, misleading, and deceptive representations, statements and assertions as to respondent's hair dye being nontoxic, safe and harmless, and extensively used by respondent as hereinabove set forth, form one of the principal bases

on which it sold its dye and sought the patronage therefor, and upon which the beauty parlors, hairdressers and consumers were solicited to use said dye in preference to or to the exclusion of dyes of competitors. By the use of such misrepresentations respondent took advantage of such public preference for hair dyes which are nontoxic, safe and harmless, and undertook to increase the sales of its dye upon said misrepresentations. It likewise urged beauty shops and hairdressers to use such misrepresentations as "Notox is nontoxic" to increase their sales of said product. In seeking to induce hairdressers and beauty parlors to adopt and use its dye in preference to the dyes of other manufacturers, respondent made announcements through its trade literature that consumers seeing respondent's representations with respect to nontoxicity, safety and harmlessness are thereby induced to have their hair dyed by such beauty parlors or hairdressers as will adopt and use respondent's said product; that such advertisements, which are national in scope, are "the largest in the field", and are effective in increasing patronage for its dye.

In the course of promoting the purchase and use of said dye by the trade and consuming public, respondent has succeeded in increasing the sales thereof, and in its advertisements has also made announcements to the effect that the volume of sales is "one-sixth of all the hair dyes on the market and there are 200 brands besides Notox" (Com. Ex. 83); that said dye has become "the dictator among hair colorings" (Com. Ex. 80), and respondent "The largest manufacturers of hair coloring in the world"; also that the dye occupies a position of "domination in the market of 200 brands" (Com. Ex. 114). With respect to increase in sales respondent reported in its literature that three women out of every seven who use its dye are women who have changed from the use of other brands of dyes to the use of respondent's dye. (Com. Ex. 36.) And respondent further indicated such diversion of patronage to its dye is largely due to said claimed safe and harmless character of the product.

PAR. 14. The aforesaid false, misleading and deceptive representations, statements and assertions, as used by respondent in the course and conduct of its business hereinabove described, are methods of competition in interstate commerce which (a) are unfair and are characterized by deception and fraud; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency and effect of injuring the public and unfairly diverting trade from respondent's said competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to

Order

16 F. T. C.

and burden upon the legitimate hair dye manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use in its hair dye business of the false, misleading, and deceptive acts and practices under the circumstances and conditions set forth in the foregoing findings as to the facts are unfair methods of competition contrary to the public interest, are injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, including the complaint of the Commission, the answer of respondent thereto, the oral testimony and other evidence and upon the examiner's report upon the facts, the exceptions of counsel thereto, and the briefs and argument of counsel; and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of section 5 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 the course of the sale or distribution in interstate commerce of the hair dye or hair coloring product heretofore sold by respondent under the designation "Inecto Rapid Notox"—also referred to as "Notox", "Inecto", or "Inecto Rapid"—or of any other hair coloring product of substantially the same composition, the respondent Inecto, Inc., its officers, directors, agents, representatives, servants and employees cease and desist:

(a) From directly or indirectly causing to be used or made any representations, statements, or assertions, in advertisements, trade promotional literature or in any other manner, to the effect that the said hair dye or other hair coloring product of substantially the same composition is safe or harmless to use, or is nontoxic or nonpoisonous, or does not contain any toxic, poisonous or deleterious ingredients or properties.

(b) From directly or indirectly using or causing to be used the word "Notox" as, or in, the designation of said hair dye or of said other hair coloring product upon the commercial containers thereof;

and from designating, describing or representing any of the said products with such word "Notox" in advertising matter or trade promotional literature used in promoting the sale or use thereof.

It is also ordered, That respondent, Inecto, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist:

(a) From directly or indirectly causing a hair dye or hair coloring product of any other composition, name or description to be represented, advertised or described—when sold or distributed in interstate commerce—by any word, phrase, statements, representations or assertions, used in the course of such sale or distribution, to the effect that such hair dye or hair coloring product is nontoxic, or nonpoisonous, or safe, or harmless, or contains no toxic, poisonous or deleterious ingredient or properties, if and when such is not true in fact.

(b) From directly or indirectly causing to be advertised or otherwise used, in the course of the sale or distribution in interstate commerce of said so-called Inecto Rapid Notox hair dye or of any other kind of hair dye or hair coloring product, any testimonials or indorsements by users or consumers thereof which imply—in the circumstances of such use—or which have the capacity and tendency to lead the public to believe, that such testimonials or indorsements are genuine or are unsolicited indorsements or testimonials concerning such product, or are letters or indorsements of the same by, or which have been received by respondent from, users or consumers thereof, if or when, however, such is not true in fact.

It is further ordered, That respondent, Inecto, Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the orders to cease and desist hereinabove set forth.

Commissioner Humphrey dissenting in memorandum attached.

Dissenting Opinion By Chairman Humphrey

I dissent to the issuance of an order in this case on the record as it stands. The motion of the respondent to take further evidence should have been granted. The record shows a vast amount of wholly immaterial evidence. The only effect of such evidence is to confuse the issue. There is also a vast amount of incompetent evidence, prejudicial to the respondent.

The conduct of this case before the trial examiner was contrary to all judicial procedure. There was a total disregard of the rules

Dissent

16 F. T. C.

of evidence, and, taking it as a whole, the way the trial was conducted was no credit to the Commission.

The respondent made a motion to strike out a large part of the evidence that was incompetent and prejudicial to respondent. On this motion, the respondent was denied a hearing and a ruling until the final argument of the case. All this incompetent evidence was referred to in the brief of the attorney for the Commission and his main argument as to why an order should be issued was based upon such evidence. The motion to strike out such evidence was granted by the Commission, but not until the case was submitted for final decision to the Commission.

Under the circumstances, I do not think that the respondent had a fair opportunity to overcome the prejudice caused by such incompetent testimony.

PRODUCT NOT LEGALLY UNSAFE

After the motion granting the striking out of this irrelevant and prejudicial testimony, the only evidence left in the record, as near as I was able to ascertain, showed that only 1 user in about 6,500 was injuriously affected by the use of respondent's product.

It is a matter of common knowledge that certain persons, because of an idiosyncrasy, are unable to eat eggs. Suppose that a manufacturer of mayonnaise advertises his product as wholesome and pure, and perfectly safe as a food; and suppose that some person, on account of his idiosyncrasy, is made sick by the eggs which the mayonnaise contains? Would the manufacturer be guilty of false and misleading advertising? I do not think that the authorities so hold. When a party advertises a product as absolutely safe, in law it means that it is safe for the ordinary person (and not as regards those few who have a physical idiosyncrasy in connection with such product. If this be not true, then many of the most widely advertised and used medicines, can not be advertised as a safe and harmless remedy.

In such cases, we do not say that the ill effects are caused by a dangerous or harmful drug or article of food. We say that it is the result of an idiosyncrasy of the user. Such drug or article of food is not in a legal sense dangerous or harmful.

Respondent claims that its product is in the class to which I have referred, and is, therefore, in a legal sense safe and harmless. It claims that ill effects, when any there are, come as the result, not of a dangerous ingredient of respondent's product, but of some idiosyncrasy of the particular user.

The fact that the insurance company issues and reissues its blanket policy, available to all users, is persuasive evidence that respondent's contention is sound in law and fact. The fact that but one out of 6,500 users has suffered ill effects lacks little, if any, of being conclusive evidence in respondent's favor.

I doubt that the undisputed facts sustain a finding that respondent's product is, in a legal or popular sense, unsafe or dangerous. If that fact be open to doubt, every available item of evidence should be added to the present record, before the Commission issues an order that may destroy an enterprise of large volume and value. It was shown that there was sufficient evidence easily obtainable to have placed this point beyond question.

NO PUBLIC INJURY

The facts in this case do not appear to me to show "public interest" as set forth in *Federal Trade Commission v. Klesner*, 280 U. S. 19, 28. In speaking of what facts constitute the requisite public interest, the court uses these words:

Sometimes, because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.

In this case, only one user out of many thousands suffers ill effects from the use of respondent's product. In the few cases of ill effects the injury is sufficiently serious to warrant a private suit. Each user has a plain remedy made easily available by respondent, upon a policy of insurance, making the insurance company severally liable to each user up to a sum of \$5,000 to \$20,000.

The number of users injured is not large. The amount of recovery in each case is large and it is highly improbable that any injured user has failed to recover upon the insurance policy. Settlement is ordinarily made upon mere notice and without litigation.

The facts in this case constitute a negation of the requirements set forth in the *Klesner* case.

Complaint

16 F. T. C.

IN THE MATTER OF
ALBERT K. SHELDON COMPANY

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

Docket 1828. Complaint, May 8, 1930—Order, June 21, 1932

Consent order requiring respondent corporation, its agents, etc., in connection with sale in interstate commerce of a certain spirit varnish, to cease and desist from (1) using word "Shelco-Lac" to designate a product not pure shellac gum cut in alcohol; or (2) trade-mark "Shelco" or any coined word or similar phonetic notation or spelling, to designate quick dry spirit varnish composed principally of Manila gum, carnauba wax, and alcohol; as in said order set forth and qualified.

Mr. PGad B. Morehouse for the Commission.

Mr. A. K. Cohen and *Mr. Max E. Bernkopf*, of Boston, Mass., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Albert K. Sheldon Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in 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", and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Albert K. Sheldon Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston in said State. It is and for more than one year last past has been engaged in the business of manufacturing, selling, and distributing to dealers, users, and consumers a certain varnish product named, designated and described by it as "Shelco-Lac", which business is carried on by respondent, in general competition and in commerce between and among various States of the United States, as in paragraph 2 hereinbelow alleged.

PAR. 2. Respondent manufactures said varnish product at its place of business in Boston, Mass., and causes same to be packed for sale and distribution in bottles, jars, tin cans, and other commercial containers of different sizes and capacities from four fluid ounces up-