

## IN THE MATTER OF

**M. KUFFERMAN, SAMUEL LAN, S. LAVINE, AND J. FEIGHERY, COPARTNERS, DOING BUSINESS UNDER THE TRADE NAME LEIPZIG IMPORTING COMPANY**

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

*Docket 2141. Complaint, Dec. 22, 1933—Decision, Oct. 23, 1934*

Where a firm engaged in sale of a proprietary article designated "Philodermin Salbe", for treatment of dandruff and other conditions of hair and scalp, represented in advertisements in newspapers and periodicals that said product was "developed by a great German scientist", destroyed dandruff quickly, restored health to the scalp, prevented baldness, saved the hair that was left, and would open the pores, grow new hair in many cases, and halt signs of baldness, and had been sold and used in Germany, and made thousands of friends, and been tried and proved effective; Facts being said product consisting of 1 percent sulphur mixed with petroleum, together with some perfume, did not constitute an efficient therapeutic agent for cure or prevention of dandruff or loss of hair, and could not cause new hair to grow, or restore health to the scalp;

With effect of deceiving and misleading members of the public who had purchased and used same in reliance upon such representations, and with capacity and tendency so to do, and effect of diverting trade to it from competitors who deal in articles or preparations for treatment of hair and scalp, and temporary removal of dandruff, and some of whom do not represent that through use of their products said condition may be prevented or cured, loss of hair and baldness be prevented, or new hair caused to grow:

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

*Mr. Edward E. Reardon* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of Section 5 of the Federal Trade Commission Act, the Commission charged respondent partners, engaged in the sale of a proprietary article called "Philodermin Salbe" for treatment of various conditions of the hair and scalp and with principal place of business in East Orange, N. J., with advertising falsely or misleadingly as to qualities or properties of product, in that they falsely represent that the use of said preparation will prevent baldness, dandruff, or loss of hair, restores health to the scalp and gives the

"choked hair roots" a chance to grow; and that it saves what hair the user of it may have, and that "you will see the difference. Within one week you will notice the change in your hair. In three weeks your mirror will tell a thrilling story. Your hair will be soft \* \* \* lustrous \* \* \* smooth. No more worries about dandruff or baldness. And then you can be proud of the 'Glory of Nature' \* \* \* your own beautified hair!"<sup>1</sup>

The publication and use by respondents of such statements, in connection with the advertisement or otherwise "in the sale of 'Philodermin Salbe' have the tendency and capacity to mislead and deceive and they have misled and deceived members of the public into believing that the said statements were and are true; and in reliance upon that belief into purchasing and using Philodermin Salbe in preference to preparations or proprietary articles sold by respondents' competitors; and have the further tendency and capacity to divert trade and they have caused trade to be diverted from competitors of respondents," engaged in the sale of various proprietary or other articles to members of the public for the same purposes for which respondents' said preparation is sold; all to the prejudice of the public and competitors and in violation of the provisions of Section 5.

Upon the foregoing complaint, the Commission made the following

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the brief filed by counsel on behalf of the Commission, no one appearing for the respondents, and the Commission having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and the conclusion drawn therefrom:

<sup>1</sup> Other statements and representations alleged in the complaint as having been made by respondents in advertisements in newspapers and periodicals, are set forth in the findings, *infra*, at page 283.

## Findings

19 F. T. C.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, M. Kufferman, Samuel Lan, and S. Lavine are residents of New Jersey, and the respondent, J. Feighery, is a resident of New York, and the said respondents are copartners doing business under the trade name Leipzig Importing Co. Said respondents have been engaged in business under the above trade name at all times since on or about September 1932, and they have a place of business at 730 Frelinghuysen Avenue, Newark, N. J.

PAR. 2. The respondents during all of the times since on or about September 1932 have been engaged in the sale of a proprietary article called Philodermin Salbe, which they have sold to members of the public located in various States of the United States other than New Jersey for use by the purchasers in treating dandruff and other pathological conditions of the hair and scalp of the user, and the respondents have caused the Philodermin Salbe, when sold by them, to be transported from New Jersey, or from the State of origin of the shipment thereof, to, into, and through States other than New Jersey, or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations located in various States of the United States, hereinafter called sellers, are and have been engaged in the business of the sale of various proprietary or other articles to purchasers, dealers therein who bought the proprietary or other articles for resale to the public, and members of the public who bought the same for their own use or consumption, and the said sellers have, respectively, caused their said proprietary or other articles, when so sold by them, to be transported from the State of the seller to, into, and through States other than the State of the seller, or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondents above-named during all the times above mentioned have been and still are in competition in interstate commerce in the sale of Philodermin Salbe with the said sellers, respectively, referred to in paragraph 3 hereof.

PAR. 5. Philodermin Salbe, the product above referred to, in the sale of which respondents have been engaged, is a yellow ointment contained when sold by respondents in a small porcelain jar and consisting essentially of sulphur 1 percent mixed with petrolatum and perfumed with vanillin or a similar material.

PAR. 6. The respondents in connection with the sale of Philodermin Salbe caused advertisements to be published in newspapers,

magazines, and periodicals which were circulated among the public of the various States of the United States and which contained statements, among others, as follows:

#### HAIR FALLING OUT?

Does your comb show evidence of oncreeping baldness, dandruff, loss of vitality of the hair? Then *Philodermin Salbe* will perform wonders for you. Developed by a great German scientist, it destroys dandruff quickly, restores health to the scalp and gives your choked hair roots a chance to grow. We guarantee to save what hair you have and prevent baldness or return your money. No matter how many treatments you have used in the past, send for *Philodermin Salbe* today. It will amaze you. Send no money. Pay postman \$1.50 anywhere in the U. S.

#### LEIPZIG IMPORTING COMPANY

Main & Grove Sts., East Orange, N. J. Dept. A-7.

In the first week apply this treatment three times. After six days you will find that every trace of dandruff has vanished.

Any oncoming signs of baldness will be halted. This is true because the *Philodermin Treatment* cleanses, lubricates and stimulates the circulation of nourishing blood to the hair roots.

Keep up this treatment once or twice weekly and you will supply the strength needed by choked hair roots. *Philodermin Salbe* will open the pores and in many cases will actually grow new hair. However, it is not advertised and sold as a hair grower.

German Discovery. For years this product has been sold and used in Germany. It has made thousands of friends. Our files are full of their letters describing their own cases and their success with the use of *Philodermin Salbe*. So you see, this is not an experiment. This hair preserver has been tried and proved effective.

PAR. 7. The respondents' product, *Philodermin Salbe*, is not an efficient therapeutic agent for the cure or the prevention of dandruff or to prevent loss of hair or baldness of a person who uses it and it cannot cause new hair to grow on the head of the user.

PAR. 8. The statements which the respondents caused to be made in the advertisements, mentioned and referred to in paragraph 6 hereof, to the effect that the use of their proprietary article, *Philodermin Salbe*, will prevent dandruff, loss of hair, and baldness, and that its use will grow new hair, were and are untrue in that the use of *Philodermin Salbe* will not prevent or cure the condition of dandruff or prevent loss of hair and baldness of the user; will not restore health to the scalp; and by its use will not cause new hair to grow on the user's head. *Philodermin Salbe* is not an efficient therapeutic agent for such purposes.

PAR. 9. The publication and the use by respondents in connection with the sale thereof, of the statements regarding *Philodermin Salbe*

## Order

19 F. T. C.

contained in the advertisements, mentioned and referred to in paragraph 6 hereof, have the capacity and the tendency to deceive and mislead, and they have deceived and misled members of the public, purchasers who bought Philodermin Salbe for use or consumption, into believing that the said statements were and are true; and in reliance upon that belief, into purchasing and using Philodermin Salbe.

PAR. 10. Among the competitors of the respondents, referred to in paragraph 3 hereof, are some who sell and cause to be sold preparations or proprietary articles for the treatment of the hair and scalp and who, respectively, do not represent that by the use of their products dandruff may be prevented or cured; or that the loss of hair and baldness may be prevented; or that by the use of their product new hair will be caused to grow on the user's head.

PAR. 11. In consequence of the practices of the respondents above set forth, trade in articles or preparations for the treatment of the hair and scalp, including the temporary removal of the excessive proliferation of the opithelial cells, otherwise known as dandruff, from the scalp, was diverted to the respondents to the prejudice and injury of competitors and the public.

## CONCLUSION

The practices of the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, copartners, doing business under the trade name Leipzig Importing Co., under the conditions and circumstances described in the foregoing findings were to the prejudice and injury of competitors of the respondents and were to the prejudice and injury of the public and were unfair methods of competition in commerce and constitute a violation of 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents to the complaint, testimony and evidence introduced, and upon the brief of counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, copartners, doing business under the trade name Leipzig Importing Co., have violated the provisions of an Act of Congress approved

280

## Order

September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

*It is now ordered*, That the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, doing business under the name Leipzig Importing Co. or trading under their own names or any other trade name, in connection with the sale or offering for sale of Philodermin Salbe or of any proprietary article or preparation for the treatment of dandruff and other pathological conditions of the hair and scalp in interstate commerce between and among the several States of the United States and in the District of Columbia, do—

*Cease and desist*, From representing directly, or indirectly, through their agents and salesmen, in advertisements in newspapers, magazines, periodicals, or otherwise—

(1) That the Philodermin Salbe, now sold by the respondents, or any other proprietary article or preparation, sold by them or any of them, will by its use cure the condition of the scalp known as dandruff, cause hair to grow or regrow or prevent the loss of hair and baldness, or that it will restore health to the scalp or head of the user.

(2) That Philodermin Salbe, as now composed, or any other proprietary article or preparation, sold by the respondents or any of them, is an efficient therapeutic agent in the medical treatment of any disease or pathological condition of the hair and scalp of the user unless and until the said Philodermin Salbe or other proprietary article or preparation is so composed that it constitutes and is an efficient therapeutic agent in the medical treatment of a particular disease or diseases or pathological condition of the hair and scalp of the user.

*It is further ordered*, That the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, shall within 30 days after the service of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order to cease and desist.

Complaint

19 F. T. C.

IN THE MATTER OF  
**THAYER PHARMACAL COMPANY AND THAYER SALES  
CORPORATION**

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

*Docket 2196. Complaint, June 12, 1934—Decision, Oct. 23, 1934*

Where a corporation engaged in the manufacture and sale of toilet preparations including a face cream designated and advertised as "Old Egyptian Turtle Oil Cream", and its corporate selling agency, engaged in the advertisement, sale, and distribution thereof to and through retail and chain and department stores, represented upon the labels that said cream would rejuvenate the skin, its retail selling price was \$2.50 per jar, and it was an "Old Egyptian Cream", facts being it did not have the effect claimed, said sum, used to create the impression of a bargain in the mind of the purchaser at a lower figure, was far in excess of the retail price contemplated and charged, and said cream was not one of the more or less preferred old Egyptian creams or products made from an old or other Egyptian formula; with tendency and capacity to mislead and deceive the purchasing public, into the belief that the various aforesaid statements and representations were true, and induce the purchase of said product in reliance on such erroneous beliefs, and unfairly divert trade from competitors to it:

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

*Mr. John W. Hilldrop* for the Commission.

*Mr. Gustav E. Beerly*, of Chicago, Ill., for respondents.

COMPLAINT

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, having reason to believe that Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Thayer Pharmacal Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State. It is now, and for several years last past has been, engaged at said city in the business of manufacturing and selling