

IN THE MATTER OF
PREFERRED TOILETRIES, INC., AND
HENRY SCHLACTUS

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

Docket 2173. Complaint, Apr. 27, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the sale of perfumes, cosmetics and other toilet articles; and its president, responsible for the methods employed by it in marketing its products;

Advertised and offered at 98 cents, plus postage, two combinations of toilet preparations, including such items as vanishing cream, shampoo, toilet water, etc., to each of which combinations it gave an aggregate value of \$11.50, through addition of the pretended "regular" prices assigned to the eleven items making up the same, together with the assertion that "most any item included in this sensational offer of 11 pieces alone would cost you what we are asking for the 11 alluring beauty needs pictured and described here";

The facts being the price asked constituted the usual price for which articles of the same grade were sold by competitors, the items included in said combination were never sold separately by them at any price, and the prices assigned said items were fictitious, and inflated over the items' true values, and did not represent prices intended by them for the sale of said items in the usual course of their business, aggregate purchase price for the combination sets did not exceed 39 cents, and the Gardenia perfume included as "regularly priced at \$3", was a synthetic preparation which sold at 10 cents retail;

With capacity and tendency to mislead and deceive the purchasing public into the belief that the regular combined selling price of said articles was \$11.50, and with effect of so doing, and of inducing purchase thereof in reliance on such belief, and unfairly diverting trade to them from competitors, to latter's injury and prejudice:

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

Mr. Morton Nesmith for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Preferred Toiletries, Inc., a New York corporation engaged in the sale of perfumes, cosmetics, and other toilet articles, to purchasers in other States, and with principal office and place of business in said State, and respondent Henry Schlactus,

president thereof since its organization and responsible since such time for formulating and carrying out its merchandising practice, here involved, with advertising falsely or misleadingly as to price or value of products offered, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, offer two combination sets, to each of which they assign a purported value of \$11.50, through the addition of the asserted regular values or prices assigned to the different items, at a pretended special reduced price of 98 cents for each,¹ the facts being the different prices assigned the items involved are grossly exaggerated and fictitious, and do not represent prices contemplated by respondents for the sale of such items, said items are never sold separately by them at any price, and the price asked, or 98 cents plus postage, constitutes their usual price for the sale of the different items, as sold in combination, and one which affords them a substantial profit.

Use by respondents, as alleged, of such false, fictitious and inflated prices in their advertising matter, "has been and is calculated to mislead and deceive, and has had the capacity, tendency and effect of misleading and deceiving the purchasing public into the belief that the regular combined selling price of the articles mentioned in respondents' said advertisements is \$11.50 and to induce the purchasing public to purchase said articles in that belief, and has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce and thereby substantial injury has been done by the respondents to substantial competition in interstate commerce", and said acts and things done by respondents, as charged, "are all to the injury and prejudice of the public and of the competitors of the respondents in interstate commerce, and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued a complaint on April 27, 1934, upon the respondents, Preferred Toiletries, Inc., a corporation organized and doing business by virtue of the laws

¹ The two combination sets as thus advertised, as alleged in the complaint, are set forth in the findings *infra*, at page 73.

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of the State of New York, and its president, Henry Schlactus, respectively, which complaint was served on April 30, 1934, charging them with the use of unfair methods of competition in commerce as commerce is defined in said act. Respondent Henry Schlactus, acting both on his own behalf and for respondent Preferred Toiletries, Inc., filed a joint answer dated May 29, 1934, to said complaint. Thereafter, on June 20, 1934, a hearing in New York City was had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto.

Thereafter, this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony, and evidence received, brief by counsel for the Commission and answer (letters) from the respondent, Henry Schlactus, and, respondents having waived oral argument, said cause was duly submitted, and, the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Preferred Toiletries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. Respondent, Henry Schlactus, is the president of said respondent, Preferred Toiletries, Inc., and has been such president since the incorporation of said last-named respondent. Said respondent, Henry Schlactus, since the incorporation of said respondent corporation, has formulated and carried out for it the methods hereinafter described, used by said corporation in marketing its products. Respondent corporation is now, and since its organization on or about September, 1932, has been engaged in the sale of perfumes, cosmetics, and other toilet articles, which products it has caused and still causes to be transported from its place of business in the City of New York to purchasers thereof located in the State of New York and various other States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business respondents have caused and still cause certain of the products of said corporation to be advertised and sold in combinations with certain others of its products, and in soliciting the sale of and in selling said products said respondents have caused and still cause the following

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statements and representations, among others, to appear as advertisements in periodicals and having a wide interstate circulation:

(1)

11 ALLURING BEAUTY NEEDS

All Full Sized Nationally Advertised Products

98¢ Plus Postage Complete

(Pictorial representation of the items, accompanied
by the following legends):

Baree Vanishing Cream.....	Regularly priced \$1 a jar.
Baree Shampoo.....	Regularly priced \$1.
Baree Lilac Toilet Water.....	Regularly priced at \$1.
Baree Cleansing Cream.....	Regularly priced at \$1.
Baree Face Lotion.....	Regularly priced at 50¢.
Baree Face Powder.....	Regularly priced \$1.
Purse Size Perfume.....	Regularly priced \$1.50.
Baree Brilliantine.....	Regularly priced at 50¢.
Baree Perfume Delite.....	Regularly priced \$3.
Baree Lip Rouge.....	Regularly priced 50¢.
Baree Nail Polish.....	Regularly priced 50¢.

\$11.50 WORTH OF TOILET REQUISITES 98¢ Plus Postage . . . Most any one item included in this sensational combination of 11 pieces offered alone would cost you what we are asking for the eleven alluring beauty needs pictured and described here . . .

(2)

11 ALLURING BEAUTY NEEDS

All Full Sized Vivian Vance Creations

98¢ Plus Postage Complete

(Pictorial representation of the items accompanied
by the following legends):

Vivian Vance Cleansing Cream.....	Regularly priced \$1.
Vivian Vance Lilac Water.....	Regularly priced at \$1.
Vivian Vance Shampoo.....	Regularly priced \$1.
Vivian Vance Vanishing Cream.....	Regularly priced \$1 a jar.
Vivian Vance Brilliantine.....	Regularly priced at 50¢.
Vivian Vance Face Powder.....	Regularly priced at \$1.
Vivian Vance Face Lotion.....	Regularly priced at 50¢.
Vivian Vance Parfum Bouquet.....	Regularly priced at 50¢.
Vivian Vance Nail Polish.....	Regularly priced at 50¢.
Vivian Vance Gardenia Perfume.....	Regularly priced \$3.
Vivian Vance Lip Rouge.....	Regularly priced 50¢.

\$11.50 worth of toilet requisites 98¢ Plus Postage . . . Most any item included in this sensational combination of 11 pieces alone costs what we ask for the eleven alluring beauty needs offered here . . .

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PAR. 3. The alleged prices and values for the separate articles as set out in the advertising matter described in preceding paragraph are false and fictitious and inflated over the true value of said products and over the prices at which said products are intended by respondents to be sold in the usual course of their business. The combined price of 98 cents plus postage for all of said articles, as set forth in the advertisements described above, is the usual and regular price at which articles of the same grade are sold by competitors of the respondent. Respondents never sold separately any of the articles described in the above advertisements at the prices suggested therein, or at any other price. The purchase price for the combination sets as set out in said advertisements did not exceed 39 cents and that one of the articles enumerated in said advertisements, viz, Gardenia Perfume, is a synthetic perfume and similar to perfumes sold daily for 10 cents retail.

PAR. 4. The "suggested" or "regular price" employed by respondents in the advertisement of its products is false and fictitious and inflated and has been and is calculated to mislead and deceive and has had the capacity, tendency, and effect of misleading and deceiving the purchasing public into the belief that the regular combined selling price of the articles mentioned in respondents' said advertisements was \$11.50 and to induce purchasing public to purchase said articles in that belief and has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce.

CONCLUSION

The acts and practices of respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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 duly heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony in support of the charges of said complaint and opposition thereto and briefs filed by counsel for the Commission and the respondents, and, the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September

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

It is now ordered, That respondents, Preferred Toiletries, Inc., and Henry Schlactus, a corporation organized and existing under and by virtue of the laws of the State of New York and its president, respectively, their agents, servants, or employees, in connection with the sale of or offering for sale or distribution in interstate commerce perfumes and toilet preparations, cease and desist, directly or indirectly, from—

(1) Advertising said products for sale in combination sets or groups in which the articles comprising said groups are set out as having been previously separately sold or regularly priced at an exaggerated or inflated figure, when in truth and in fact said individual articles had never been sold either separately or at such exaggerated or inflated figures.

(2) Making any false, fictitious, or misleading statements or representations concerning the regular prices at which said products or any of them have been or are intended to be sold in the usual course of trade and commerce.

It is ordered, That respondents shall within 60 days after service of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with and conformed to the order to cease and desist as above set forth by the Commission.

IN THE MATTER OF
SCIENTIFIC PRODUCTS, INC.

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

Docket 2176. Complaint, May 3, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the manufacture of can openers, and in the sale thereof through house-to-house canvassers or agents; in periodical advertising directed to securing the services of such agents, and in printed matter sent them for their use in demonstrating and soliciting the sale of its "Nu-Day Magnetic Can Opener"—

- (a) Represented that there had been "discovered" the "horrible danger of metal slivers in food from opening cans", and that such danger had been "revealed by scientific tests" and dwelt upon and elaborated such supposed danger through such statements as "are you feeding your family metal chips and slivers", "it has now been proved that ordinary can openers shave off sharp jagged metal slivers that drop into the food contents", and "it is only logical that metal chips and slivers, swallowed with food, can be just as dangerous, if not more so", as fish bones and other extraneous objects in food, pointed out by medical authorities as causes of serious injury, and called attention to the "nearly universal consumption of canned foods", and the "dangers to health" never "before realized", as lurking in the simple operation of can opening;
- (b) Represented that "a revolutionary new invention" to wit, its said Nu-Day Magnetic Can Opener "vanished" obsolete openers, and that its said product had been hailed as a safeguard to health and ended the danger of metal slivers in food through such statements as "revolutionary new invention", "hailed as a safeguard to health", and "now at last comes the safe, perfect little automatic opening machine that all America has prayed for", and "no other can opener at any price gives you this freedom from worry"; and
- (c) Included in its aforesaid advertising matter pretended depictions of other can openers and cans pretendably opened by other openers, and a magnifying glass showing pretended slivers or particles of metal from cans opened with other openers, together with such statements as "actual unretouched microscopic photograph showing the many metal slivers shaved off by any ordinary can opener";

The facts being that said Nu-Day Magnetic Can Opener does not prevent the falling of pieces of metal, if any there be, into the food contents of cans opened therewith, statements and representations regarding the alleged danger that may result from the use of openers other than those manufactured and sold by it are exaggerated, as respects the alleged danger or hazard of gastro-intestinal stomach disturbances, which may be caused by the ingestion of such pretended or alleged metal particles in food, and other competitive products deposit smaller amount of such particles in the can than does its own said product;