

Complaint

IN THE MATTER OF
UNITED REMEDIES, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2245. Complaint, Nov. 8, 1934—Order, Jan. 25, 1935*

Consent order requiring respondent, its officers, etc., in connection with the sale or offering in interstate commerce of a hair dye, to cease and desist forthwith from representing through radio broadcasts, labels, printed advertisements, or otherwise, that said preparation or any other preparation for coloring the hair can cause gray hair to disappear like magic and end gray hair handicaps, and from using words of similar tenor, unless in conjunction therewith and in equally conspicuous fashion, it is explained that the preparation is a hair dye and that the effect of its use can be maintained only by repeated and regular applications, in accordance with the natural growth of the hair.

Mr. James M. Brinson for the Commission.

Soelke, Koehn & Loewy, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that United Remedies, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business in the city of Chicago, in said State.

PAR. 2. Respondent is and for some time past has been engaged in the business of selling a preparation for coloring the human hair, to which it has given the trade name of "Kolor-Bak", and which is a part of a trade mark registered in the Patent Office. Respondent sells its preparation to and through retail drug stores, department stores, and other retail outlets located throughout the United States in States and Territories other than the State of Illinois. When such sales are made, it is contemplated that shipment shall be made,

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and shipment is regularly made, to said purchasers from respondent's place of business in the State of Illinois.

PAR. 3. There are in the United States various other persons, firms, and corporations engaged in selling preparations for dyeing and otherwise artificially coloring the hair, particularly gray hair, and such other persons, firms and corporations sell and ship their respective products in interstate commerce, as hereinbefore defined. Respondent, in the sale of its said product, is in substantial competition with such other persons, firms, and corporations.

PAR. 4. To advertise and create a consumer demand for its preparation, respondent employs, in addition to other methods, radio programs, consisting of representations and claims concerning its said product, interspersed with music and other entertainment. Said programs are broadcast from and by radio stations located in Chicago, in Los Angeles, in Dallas, and in other parts of the United States, and may be and are heard by persons within the States surrounding such broadcasting stations.

PAR. 5. In its advertising, and particularly in the course of such radio broadcasts, respondent refers to and designates its said preparation by the trade name "Kolor-Bak" and makes the following representations and assertions concerning it:

To end gray hair handicaps, all you now have to do is comb it once a day for several days with a few drops of Kolor-Bak sprinkled on your comb.

Kolor-Bak imparts color and charm and abolishes gray hair worries.

Grayness disappears like magic and users report the change is so gradual and so perfect that their friends forget they ever did a thing to it.

Here is Kolor-Bak's special offer to everyone who wants to get rid of gray hair handicaps forever.

and other and similar claims and representations of the same tenor and to the same effect.

PAR. 6. Respondent's trade name for its said product, "Kolor-Bak" is phonetically the same as the words "color back" and is intended as the phonetic spelling of said words to permit their registration as a trade mark. Such name has the capacity and tendency to deceive and mislead prospective customers into the belief that the effect of respondent's preparation is to restore the original color of the hair. In truth and in fact the action of said preparation is to artificially color the hair and it must be periodically used, as the hair grows, to continue its effect as a coloring agent.

PAR. 7. The use of the representations and statements hereinabove quoted in connection with the trade name Kolor-Bak, has the capacity and tendency to deceive and mislead prospective pur-

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chasers into the belief that not only does the preparation restore the original color to the hair, but that the effect of its use is permanent.

PAR. 8. The said false and misleading trade name and the false and misleading claims, representations, and statements by respondent of and concerning its said preparation, as hereinbefore alleged, and the resulting deception of prospective purchasers, have the capacity and tendency of diverting business from respondent's competitors and constrain the public to purchase respondent's preparation in preference to that of its competitors who correctly advertise their preparations as hair dyes or coloring agents, to the prejudice and injury of such competitors, and are to the injury and prejudice of the public in that purchasers and prospective purchasers of respondent's preparation are misled into the belief that it is not a hair dye or a hair coloring agent but is a preparation for restoring gray hair to its original color.

PAR. 9. The false and misleading trade name and false and misleading representations, claims, and statements made by respondent, as hereinabove alleged, 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondent, United Remedies, Inc., by its answer filed herein, having waived hearing, having stated that it refrains from contesting the matter, and consented that, as provided in Rule V, paragraph (b) of the Commission's Rules of Practice, without evidence and without findings as to the facts or other intervening procedure, the Commission might make, enter and serve upon respondent an order that it cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the complaint and answer and being fully advised in the premises—

Now, therefore, it is hereby ordered, That respondent, United Remedies, Inc. its officers, agents, employees, and representatives, in or in connection with selling or offering for sale in interstate commerce a preparation for coloring the hair, forthwith cease and desist from the use of the following practices and methods of advertising, whether by radio broadcasts, by labels, written or printed advertisements, circular letters, or otherwise—

From representing that such product or any other hair dye or solution or preparation for coloring hair can end gray hair handicaps,

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abolish gray hair worries, cause gray hair to disappear like magic, get rid of gray hair handicaps forever, and from using words of similar significance or effect, unless in connection and immediate conjunction therewith, and equally as conspicuous, there appears an explanation that the product so represented is a hair dye or solution or preparation for coloring hair, and that the effect of its use can be maintained only by its repeated and regular application in accordance with the natural growth of the hair.

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

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IN THE MATTER OF
EOPA COMPANY

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

Docket 2184. Complaint, May 21, 1934—Order, Jan. 23, 1935

Consent order requiring respondent in connection with the sale of its so-called Eopa Neuritis Tablets and Eopa Phytolberry Tablets in interstate commerce, to cease and desist from representing by advertisements or in any other way that—

- (a) Said Neuritis Tablets are a sure remedy for painful and diseased or undernourished nerves, or severe nerve pains, sciatica, neuralgia, acute rheumatism, lumbago, or neuritis, or constitute a specific remedy for any of such ailments or conditions and will bring about permanent relief; or
- (b) Its last named tablets will reduce weight swiftly or restore one to one's normal weight and benefit health, or cause one to shed disfiguring fat, or that the action thereof is directly upon the fatty tissues and causes a dissolution of the fat cells.

Mr. Morton Nesmith for the Commission.

Brittain & Weise, of San Francisco, Calif., and *Mr. W. Bruce Philip*, of Washington, D. C., for respondent.

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 Eopa Company, a corporation, has been and is 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. Respondent, Eopa Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having and maintaining its laboratories, offices, and principal place of business at 880 Folsom Street in the city of San Francisco in the State of California. Respondent has been and is engaged in the production of homeopathic medicines and pharmaceutical preparations. Respondent has been and is also engaged in offering for sale and selling homeopathic medicines and pharmaceutical preparations in commerce between and among the