

Syllabus

IN THE MATTER OF

NORWOOD SOLLY AND CHARLES B. SOLLY, COPARTNERS, TRADING UNDER THE NAME OF NORWOOD PHARMACEUTICAL LABORATORIES

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

Docket 2281. Complaint, Jan. 14, 1935—Order, Feb. 14, 1935

Consent order requiring respondents, their agents, etc., in connection with the sale or offer of cosmetics in interstate commerce, to cease and desist from representing and advertising through magazines, newspapers, pamphlets, labels, testimonials, or by radio or otherwise, that—

- (a) Their sales people are dermaticians, and they employ pharmaceutical chemists and chemists, and have consulting chemists;
- (b) Cosmetics should be selected for the particular type of skin and their representatives take a skin analysis for chemists and doctors prescribe from analysis records for each particular customer, and their prescriptions are specially made up to fit the particular needs of the customer;
- (c) Their massage cream can truly be called a cream rejuvenator, their creams contain no grease or casein, and are the results of scientific study of dermatologists and pharmaceutical chemists, selected for the individual customer, and their face powders are medicated and will help to alleviate and, in some cases, cure skin diseases and irritations, and that through the use thereof sufferers from eczema, acne, and blackheads will find relief and pimples can be made to vanish;
- (d) They send out information to customers from time to time about their skin, and the hair, and their formulas are helpful in treating and, in some cases, curing an ailment, and they are experts in building, formulating, and selecting corrective beauty services, and give each patron individual, satisfactory service; and

Ordered further, That respondents cease and desist from use on letterheads, or in labels, or any other advertising media of (1) the staff of Hermes, insignia of the Army Medical Corps, (2) the words "Formula Number", referring to their creams, or (3) the words "Reg. U. S. Pat. Off." or other words of like import, until their trade name has been registered in the Patent Office, and they have a legal right to use said words; and

Ordered further, That respondents cease and desist from—

- (a) Use of the word "Pharmaceutical" in their corporate or trade name, or any other word of like import, or use thereof upon or in their labels, booklets, stationery, letters, or otherwise; or
- (b) Use of symbol "R" in the word "Norwood" of their trade name and on letterheads, and in pamphlets, labels and other advertising media; and

Ordered further, That respondents, their agents, etc., cease and desist from substituting and passing off to the public, competitors' products as their own, and advertising and representing that they manufacture all of the products sold and distributed by them.

Mr. Astor Hogg for the Commission.

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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 charges that Norwood Solly and Charles B. Solly, copartners doing business under the trade name and style of Norwood Pharmaceutical Laboratories, hereinafter referred to as respondents 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. Respondents are copartners doing business under the trade name and style of Norwood Pharmaceutical Laboratories, with their place of business in the city of Philadelphia, State of Pennsylvania. Said copartnership, trading under the name of Norwood Pharmaceutical Laboratories is now and has been since March 1933 engaged in the business of manufacturing or causing to be manufactured face creams and cosmetics and in the sale and distribution of said products in interstate commerce to the purchasing and consuming public throughout the several States of the United States. Respondents offer for sale and sell their creams and cosmetics through and by means of salesmen and salesladies and agents who, on behalf of respondents, solicit purchase orders for said creams and cosmetics from the purchasing and consuming public throughout the several States of the United States. As the result of said solicitation and offering for sale, many members of the purchasing public throughout the United States are thereby induced from time to time to purchase said creams and cosmetics from respondents, to transmit their purchase orders for said products and to make their remittances therefor from their respective points of location in States other than the State of Pennsylvania to, and which are received by respondents at their place of business in, Philadelphia, Pa.

To complete the sale and distribution of their products and acting pursuant to said purchase orders, respondents cause their creams and cosmetics so ordered or sold to be transported and delivered from their place of business in Philadelphia, Pa., through and into other States of the United States to the respective purchasers thereof in such other States, and in so carrying on their business respondents maintain a constant current of trade and commerce in said products between the State of Pennsylvania and other States of the United States. Throughout the course and conduct of said business, re-

spondents have been engaged in and continue to engage in interstate commerce and in direct, active competition with many individuals, partnerships and corporations engaged in the sale and distribution of creams and cosmetics in commerce between and among the several States of the United States.

PAR. 2. Respondents have included in their trade name the symbol  which symbol is recognized by the consuming public and the druggist trade as standing for the word prescription or prescribe. The tail of the letter R in the word Norwood is extended and crossed thus incorporating into the name the well-known and generally understood medical insignia . Also included in the trade name is the word Pharmaceutical. In the use of the symbol  the purchasing and consuming public are led to believe that respondents have in their employment a doctor or doctors who prescribe for the needs of the various individuals comprising the purchasing public, and in the use of the word Pharmaceutical in the trade name the purchasing and consuming public is led to believe that connected with the respondents are Pharmaceutical doctors who compound and dispense medicine according to prescriptions of physicians.

In truth and in fact respondents do not have in their employment and do not use any doctors or physicians who prescribe for individuals and do not have in their employment doctors of pharmacy who compound and make up medicines or any other sort of preparations for the members of the purchasing public. So that, the medical symbol  and the word Pharmaceutical as used in the trade name of respondents are grossly false, deceptive, confusing, and misleading to the consuming public. Immediately beneath the word NoR wood in the trade name Norwood Pharmaceutical Laboratories, respondents place in small type the words "Reg. U. S. Pat. Off." which words mean to the purchasing public that the word NoR wood is a trade mark registered in the United States Patent Office, when in truth and in fact it is not registered in the United States Patent Office, and such words are misleading and deceptive to the public. The trade name as described herein is used by respondents on their letterheads, bills and other literature put out by them which are seen and read by the purchasing public.

PAR. 3. On the labels, letterheads, and advertising matter of respondents is the Caduceus or the staff of Hermes or Mercury, but which insignia is known and generally understood by the purchasing public as the insignia of the Army Medical Corps. In the use of said medical insignia prospective buyers are led to believe that physicians and medical officers are connected with respondents. Such insignia appearing as it does appear upon the labels, letterheads,

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and advertising matter is grossly misleading, deceptive, and false because no physicians or medical officers are associated in any manner with the respondents. Advertising matter is contained on the labels themselves that are wrapped around the jars which show that the word NoR wood is registered in the United States Patent Office.

On the labels of respondents the same Catenation of the prescription symbol R, the Caduceus and the words Pharmaceutical Laboratories appear, and in addition thereto the word "name" and the words "formula number", which, set up on the labels, lead the prospective customers and purchasing public to believe that the preparation was a prescription especially prepared by a formula submitted by a dermatologist or physician and that the purchaser was receiving a specially prepared product to fit his or her particular requirements. In truth and in fact respondents do not offer or furnish specially prepared prescriptions from a formula submitted by a dermatologist or physician and the purchaser does not receive a specially prepared product to fit his or her particular need.

PAR. 4. Respondents in the further aid of the sale of their face creams and cosmetics advertise in magazines and newspapers, published in many of the States of the United States, and also in letters, on stationery, in circulars and in pamphlets, which advertising reaches their customers and prospective customers residing in the several States of the United States. In and through such media respondents represent that—The salesmen or salesladies are "dermaticians". The word "dermatician" does not appear in any of the standard dictionaries in common use, but the word "dermatologist" is one of common usage in the English language and appears in all the standard dictionaries, and it has the well understood meaning of skin specialist, a physician specially trained in the treatment of skin disorders. The use of the word "dermatician" is confusing and misleading to the general public and to prospective purchasers, and the public is thereby led to believe that respondents employ skin specialists when such is not the fact. The word "dermatician" is found on all the order blanks of respondents and on the back of such order blanks is a blank for the analysis of the person's skin, and this leads the prospective purchasers and the general public to believe that the salesman or saleslady taking the analysis was specially trained and qualified to take the analysis and to prescribe the proper kind of face creams for his or her condition. In truth and in fact the salesmen or salesladies are not specially trained and are not qualified to take the analysis or to prescribe the proper kind of face creams for his or her condition.

On the back of the order blank appears a form for analysis record of each individual. It is the practice of the salesmen or salesladies

who contact the public to go about giving prospective purchasers a free skin analysis. The salesmen or salesladies fill out the analysis record on the back of the order blank. It is transmitted, along with the order, to the place of business of respondents. Respondents represent in various pamphlets, circulars and different literature that from the analysis record physicians and doctors prescribe for each particular customer his or her particular needs as gleaned from the analysis record, and, that then this prescription is specially made up to fit the prescription and then is sent to the customer. Such representations are grossly false, misleading and untrue and a fraud, because respondents do not make up any prescription from such analyses and neither do they furnish their customers and prospective customers any specially prepared product to fit any particular need. On the contrary they fill the order from a common source of supply.

Respondents give to their agents what they term "Dermatologist's Instructions", which is contained in a pamphlet. The agents and salesmen or salesladies verbally give to the purchasers and prospective purchasers the contents thereof. In said pamphlet is contained such expressions as these: "Numbered among our consulting chemists we find Pharmaceutical Chemists associated with some of the very largest concerns in the world." "It is our intention to work just as closely as possible with the medical profession. Many of the leading doctors today state that cosmetics should be selected for the individual's particular type of skin, and from the analysis we accomplish this important feat." Such representation contained in said pamphlet and repeated to prospective purchasers leads such prospective purchasers to believe that the products were selected for the individual's particular type of skin, due to the analysis furnished by the prospective purchaser herself.

In truth and in fact the products are not selected for the individual's particular type of skin and it is impossible to prescribe from the analysis submitted for the particular needs of any particular customer. The above quoted matter also leads the public to believe that employed with respondents are a number of consulting chemists, which is false and untrue. On page 3 of the pamphlet is found, "Remember at all times you are not giving anyone a facial, you are simply taking a skin analysis for our chemists and instructing in the daily care of the skin in the home." In truth and in fact the agent or salesman or saleslady in reporting on the order blank is the one who gives the order for the type of cosmetic to be sold to the person in question. In truth there is but one chemist in the employment or connected with respondents in any way, and no chemist of respondents selects or prepares specially the products in filling the order, but

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orders are filled from a general supply of the various products. Such forms of representations are grossly false, deceptive and misleading to the purchasing public. It is set out in the pamphlet that respondents have in their employment pharmaceutical chemists and their associates, when in truth and in fact they have but one chemist.

On page 9 of the pamphlet is found the representation that "this cream is the result of scientific study by dermatologists and pharmaceutical chemists. It is selected for the individual." That statement induces the agent to rely thereon, and said agent, in turn, repeats the same statement to prospective purchasers, that the creams are selected for the individual, when in truth and in fact the creams are not selected for each individual. On page 12 of the pamphlet regarding Norwood's Vita-Derma Massage Cream, it is stated "that it can be truly called a skin rejuvenator." Such a statement is false, deceptive and misleading because the Vita-Derma Massage Cream does not have the semblance of a skin rejuvenator and does not and will not rejuvenate the skin. On page 12 of the pamphlet, in speaking of Norwood's cleansing cream, the statement, "contains no grease, wax or casein," is found. Said statement is false, misleading and deceptive because Norwood's cleansing creams are made from white mineral oil and beeswax.

On page 13 is found this statement, "because our face powders are medicated, and absolutely pure, they will do much to alleviate and in some cases cure a multitude of skin diseases and irritations so prevalent today. Sufferers of eczema, acne and blackheads will many times find permanent relief when all other medicines have failed. Pimples too can be made to vanish by the use of our face powder in conjunction with our other formulations for this purpose." Said statements are utterly false and untrue and misleading and deceptive to the purchasing public because such face powders are not medicated and are not absolutely pure and do not alleviate skin diseases or irritations, and in no case will they cure any skin disease. Sufferers of eczema, acne and blackheads do not find permanent relief or any relief from the use thereof. Pimples will not vanish by the use thereof. Moreover, the use of the word "cure" in the statement leads the agents and in turn the public to believe that the preparation had been made up by a doctor when such is not the case.

On page 20 of the pamphlet is found this representation:

We will from time to time send you information about the skin and hair in our bulletin. This information will be compiled by the very best medical authorities and should be very helpful to you.

In truth and in fact respondents do not send out any bulletins to their salesmen or salesladies containing information about the skin

and hair. No information is compiled by the very best medical authorities and sent to the agents. The agents repeat the substance of these statements to their prospective customers and such statements are misleading and deceptive to the prospective purchasers and consuming public.

On page 20 of the pamphlet is found this representation:

Norwood's formulations are especially helpful in taking care of an ailment and their use will be very helpful and, in some instances, effect a cure.

That statement is misleading, deceptive, and confusing to the agents and in turn to the public because it would lead the agents and public to believe that physicians and dermatologists are employed by respondents to prescribe for ailments of individuals which is not a fact.

On page 23 of the pamphlet is found this representation:

We are experts in building, formulating and selecting complete corrective beauty services and we are therefore able to give each and every patron individual satisfactory services.

Such statements are false, misleading, and deceptive. They lead the agents of respondents to make misrepresentations to prospective customers that the creams are made up for the individual which is not the fact.

Further advertising is done by respondents by placing in the hands of customers and prospective customers throughout the United States a pamphlet known and designated by it as "aids to beauty", and on the back of such pamphlet appears the trade name of respondents along with the Army Medical Corps insignia or caduceus. Contained in this pamphlet are found these words:

Our Dermatician may in your case deviate from this suggested treatment, in which case our instructions should be carefully followed.

This statement in said pamphlet is extremely misleading to the purchasers and prospective purchasers because the words "our dermatician" leads purchasers and prospective purchasers to believe that the agents making the skin analyses possess unusual skill and are specialists in skin treatment, when in truth and in fact the agents of respondents are not specialists in skin treatment and neither do they possess any uncommon skill in making their analyses. Respondents also advertise by passing out through their agents to prospective purchasers and the consuming public cards which they term "complimentary skin analyses" course, upon which cards is the trade name of respondents with the $\mathcal{R}$ symbol, the Army Medical Corps insignia and the words, "Reg. U. S. Pat. Off." Also included on the card is a line under which is written "Dermatician Specialist

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of Norwood." Such advertising is false, misleading and deceptive to purchasers and prospective purchasers.

PAR. 5. Mr. D. H. Moore is the sales manager for respondents and as such controls, manages and operates a part of the business activities and transactions of said partnership. The relation of D. H. Moore to said partnership and its business is such that Moore is able to, and does, use said partnership as an instrumentality to accomplish such things as respondents' purpose and plan. The acts, practices, and transactions of said Moore are deemed to be and are alleged and charged as the acts and practices of said respondents as shall be hereinafter alleged and charged. In the course and conduct of the business of respondents through and upon the suggestions and recommendations of said sales manager, D. H. Moore, the agents of respondents have indulged in the practice of substituting and passing off to the public products of respondents' competitors as and for the exclusive products of respondents. Moreover, respondents hold out to the public by advertising and representations that they manufacture all of the products sold by them to the public. Such advertising and representations are false and misleading, because in truth and in fact respondents do not manufacture all the products which they sell to the public. They do sell to the public products that have been manufactured by other manufacturing concerns.

PAR. 6. The said description and representations made by respondents as to their products, and each of them, set forth in paragraphs 2, 3, 4, and 5 hereof, and the use of the trade name and trade marks, insignia, symbols and words in connection with the trade name have the capacity and tendency to deceive the purchasing public and induce purchasers to buy the products of respondents in and on account of the belief that said representations and descriptions are true. Said representations and statements have had and do have the tendency and capacity to induce purchasers of respondents' product because of the erroneous belief that they are true, and thus divert trade to respondents from competitors of respondents engaged in the sale in interstate commerce of face creams and cosmetics who truthfully and honestly advertise and represent their products. There are competitors of respondent who actually and in truth prescribe creams and cosmetics for the use of particular individuals and to meet their individual requirements and who employ doctors of pharmacy to compound such cosmetics and creams after they have been prescribed by duly registered physicians.

PAR. 7. The acts and things done by respondents are to the injury and to the prejudice of the public and the competitors of respondent.

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ents in interstate 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

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" (38 Stat. 717), the Federal Trade Commission, on January 14, 1934, issued its complaint against the above-named respondents, in which it is alleged that the respondents are, and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. On February 1, 1935, the respondents filed their answer to the said complaint wherein the respondents consent that the Federal Trade Commission may make, enter, and serve upon them in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of cosmetics manufactured, sold and distributed by them, and the Commission being now fully advised in the premises:

It is ordered, That respondents, Norwood Solly and Charles B. Solly, copartners, trading under the name of Norwood Pharmaceutical Laboratories, their agents, representatives, and employees in connection with the selling or offering for sale or in the aid of the sale of their cosmetics in interstate commerce between and among the several States of the United States, and in the District of Columbia, cease and desist from representing and advertising through magazines, newspapers, booklets, pamphlets, labels, letters, circulars, order blanks, testimonials by means of radio or otherwise that—

(a) Respondents' salesmen or salesladies are dermaticians.

(b) Doctors or physicians, from any analysis record, prescribe for each particular customer and that any prescription is especially made up to fit the particular needs of a customer.

(c) Pharmaceutical chemists and chemists are employed by respondents and that respondents have consulting chemists, and that doctors state that cosmetics should be selected for the particular type of skin, and from the analysis submitted respondents accomplish this feat.

(d) Respondents' representatives take a skin analysis for chemists.

(e) The creams sold and distributed are the result of scientific study by dermatologists and pharmaceutical chemists and are selected for the individual customer.

(f) Vita-Derma massage cream can truly be called a skin rejuvenator and that their creams contain no grease or casein.

(g) Their face powders are medicated and will help to alleviate and, in some cases, cure skin diseases and irritations, and that by the use of said powders sufferers of eczema, acne, and blackheads will find relief, and that pimples can be made to vanish by the use of said face powders.

(h) Information is sent out to customers by respondents from time to time about their skin and the hair.

(i) Norwood formulas are helpful in taking care of an ailment and, in some instances, effect a cure, and that respondents are expert in building, formulating, and selecting corrective beauty services and give each patron individual, satisfactory service.

(j) Respondents' representatives take analysis of skin.

It is further ordered, That respondents, their agents, representatives, and employees cease and desist from using any words, devices, or means which import or imply any of the creams or cosmetics sold and distributed by respondents in interstate commerce have therapeutic virtues or values or that respondents prescribe or compound their creams or cosmetics for particular needs of particular customers, or that respondents employ doctors or chemists to prescribe or compound their cosmetics, or that they have in their employment dermatologists or skin specialists.

It is further ordered, That respondents cease and desist from using on their letterheads, pamphlets, labels, magazines, and other advertising media:

(a) the caduceus or the staff of Hermes, known as the insignia of the Army Medical Corps;

(b) the words "Formula Number" referring to their creams;

(c) the words "Reg. U. S. Pat. Off." or any other words of like import in connection with their trade name, unless and until they register their said trade name in the U. S. Patent Office and procure the legal right to use such words.

It is further ordered, That respondents cease and desist from the use of the word "Pharmaceutical" in their corporate or trade name, or any other word of like import and from using the word "pharmaceutical" upon their labels or any booklets or on their stationery or letters or otherwise.

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It is further ordered, That respondents cease and desist from the use of the symbol $\mathfrak{B}$ in the word "Norwood" of their trade name and on their letterheads, pamphlets, labels, and other advertising media.

It is further ordered, That respondents, their agents, representatives, and employees cease and desist from substituting and passing off to the public products of respondents' competitors as the products of respondents and from advertising and representing that respondents manufacture all of their products sold and distributed by them to the public.

It is further ordered, That the said respondents, Norwood Solly and Charles B. Solly, copartners, trading under the name of Norwood Pharmaceutical Laboratories, shall within 60 days after the date of service on them 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 are now complying with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
ELI DANE, TRADING UNDER THE FIRM NAME AND
STYLE OF YORK RADIO COMPANY

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

Docket 2268. Complaint, Dec. 18, 1934—Order, Feb. 15, 1935

Consent order requiring respondent, his agents, etc., or successors, in connection with the manufacture, sale and offer in interstate commerce of radio sets, to cease and desist from—

- (a) Applying directly or indirectly or attaching or using on any radio set made, assembled and sold by or for him, escutcheon plates, or marks or other means of identification bearing the name "Edison" or "Victor", whether used alone or with prefixes or suffixes or with other names or markings;
- (b) Marking or branding, or directly or indirectly making or using any representations or assertions in advertisements, trade literature, wrappers, cartons or containers, or in signs or sales talks, radio broadcasts or other wise with the words "Edison" or "Victor", whether alone or with prefixes or suffixes or with other names or markings, or to the effect that said sets are the products of "Edison" or "Victor" or are made, assembled and sold, or sponsored, approved, licensed, authorized or consented to by said Edison, or Edison or Victor companies, as specified, or persons or concerns legally qualified to act for them in such matters.

Mr. Carrel F. Rhodes for the Commission.

Dane & Weinstein, 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 Eli Dane, trading under the firm name and style York Radio Company, hereinafter referred to as respondent, has been or 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, Eli Dane, owns and has caused to be registered with the New York County Clerk's Office, New York City, the trade name "York Radio Company", under which name respondent operates.

PAR. 2. Respondent, Eli Dane, now is and for more than one year last past has been engaged under the name and style of "York Radio