

Syllabus

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IN THE MATTER OF

WILLIAM LITTMAN AND MAX LITTMAN, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE OF IMPERIAL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2300. Complaint, Feb. 19, 1935—Decision, Aug. 5, 1935*

Where an individual engaged in the manufacture of permanent hair waving appliances and products, including a permanent hair waving lotion and permanent wave sachets sent to customers through the United States in response to orders secured by advertisements in leaflets and booklets, describing said products,—

- (a) Included the word "Laboratories" in his trade name and prominently featured the same in his aforesaid advertising and represented that said lotion had been perfected by leading chemists, the facts being said preparation was compounded by him at his place of business in which the only equipment consisted of three chemical vats, electrical burning equipment, stoves and weighing scales, and he did not have in his employ any chemist, though employing a consulting chemist who checked the product at the laboratory of the university in which said chemist was an instructor, after its preparation by said individual, nor did he have a laboratory for the making and compounding of such lotion and other similar products, to wit, at the least, a microscope and soapstone sink, soapstone furnace and canopy, glass retort stills, proper density machines, measuring glasses, hydrometers and temperature glasses; and
- (b) Represented that said lotion would wave hair of any character without drying or altering its texture, and the felt used in his sachets was treated so that it would absorb the lotion evenly, assuring a uniform steaming of every curl applied, facts being process of putting permanent waves into the hair necessarily changes texture thereof, and the felt in said sachets had not been treated so that it absorbed the lotion evenly and assured uniform steaming of every curl to which applied;

With capacity and tendency to mislead and deceive the purchasing public into the belief that he maintained a laboratory in which his products were analyzed, compounded and tested, and cause public to purchase his said lotion because of the erroneous belief so engendered, and divert business to himself, to the substantial injury and prejudice of competitors, among whom there are those who truthfully and correctly advertise their said products, and do not in any way misrepresent their trade status, or falsely represent that they maintain and operate a laboratory or laboratories in which their products are compounded:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Charles F. Consaul, of Washington, D. C., 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 charges that William Littman and Max Littman, copartners doing business under the trade name and style of Imperial Laboratories, hereinafter referred to as the 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 Imperial Laboratories, with their place of business in the city of New York, N. Y. Said copartners, trading under the name of Imperial Laboratories, are now and have been for more than two years last past engaged in the business of manufacturing permanent wave appliances and products 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 cause their said products when so sold to be transported from their said place of business in the State of New York into and through other States of the United States to the purchasers thereof located in States of the United States other than the State of origin of such shipment, and in the District of Columbia, and in so carrying on their business respondents maintain a constant current of trade and commerce in said products between the State of New York and other States of the United States and in the District of Columbia. In the course and conduct of their said business, respondents are in competition with other corporations, partnerships and individuals engaged in the sale and distribution of like products in commerce between and among various States of the United States, and in the District of Columbia, which products so sold and distributed by such competitors are to be used for purposes similar to those purposes for which respondents' products are to be used.

PAR. 2. In the course and conduct of their business respondents have adopted as and for a trade name under which to carry on their said business the words "Imperial Laboratories" and have used said trade name and featured the same in advertisements and advertising matter, letterheads, circulars and other media widely circulated in interstate commerce. In truth and in fact, said William Littman and Max

Littman do not own, control or operate any place devoted to experimental study in any branch of natural science or to the application of scientific principles in testing and analyzing or in the preparation of drugs or chemicals, and have never owned, controlled or operated any such place so devoted to such uses. The use by respondents, William Littman and Max Littman, of the word "Laboratories" in their corporate name and in their advertising is false and misleading.

PAR. 3. In the course and conduct of their business as described in paragraph 1 hereof, respondents, William Littman and Max Littman, trading under the name of Imperial Laboratories, in order to aid the sale of their said products, have caused to be published certain leaflets, booklets, and circulars, and other similar publications, and have distributed the said booklets, leaflets, circulars, and other publications throughout various States of the United States, in which said booklets, leaflets, circulars and other publications respondents have made numerous false and misleading statements and representations, among which are the following:

Our lotion, which has been perfected by leading chemists, is made of the finest ingredients. It will wave hair of any character without drying or altering its texture * * *

The felt used in our sachets is treated so that it will absorb the lotion evenly, assuring the uniform steaming of every curl applied.

In truth and in fact:

(a) Said product has not been "perfected by leading chemists" nor has the formula thereof been invented or improved by such chemists.

(b) Said process of permanent waving would not and does not wave hair of any character without drying it or altering its texture.

(c) The felt used in the sachets has not been treated in any way which has rendered it "superior" nor is it "superior" to ordinary felt.

PAR. 4. There are among the competitors of respondents described in paragraph 1 hereof manufacturers, sellers and distributors of like hair wave products and who, in truth, own, operate and use laboratories for making up and compounding such products; there are also among such competitors persons, firms and corporations which do not own or operate laboratories and who do not make such representations as those made by respondents as set out in paragraph 3.

PAR. 5. The said representations made by respondents about their products, as set forth in paragraphs 3 and 4 hereof, and the use of the trade name "Imperial Laboratories" as set out in paragraph 2 hereof, 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 are true. Said representations have had and do have the tendency and capacity to induce purchases of respondents' products 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 such products as sold and distributed by respondents which said competitors truthfully and honestly advertise and represent their products.

PAR. 6. The acts and things done by respondents are to the injury and prejudice of the public and the competitors of respondents 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.

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 issued and served a complaint upon the respondents, William Littman and Max Littman, copartners trading under the name and style of Imperial Laboratories, charging them with unfair methods of competition in violation of Section 5 of said Act, and respondents duly filed their answer thereto. Thereafter, respondents having entered their appearance, testimony was taken and evidence received in support of the complaint and on behalf of respondents, and duly reduced to writing and recorded and filed in the office of the Commission. Subsequently, this proceeding came on for final hearing on the record and the Commission having duly considered the record and the briefs and oral arguments of counsel for the Commission and the respondents, 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The place of business of respondent William Littman is located in the city of New York, State of New York. Respondent William Littman is engaged in the business of manufacturing permanent wave appliances and products and in the sale and distribution of said products in interstate commerce to the pur-

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chasing and consuming public throughout the several States of the United States causes said products when so sold to be transported from his place of business in New York, through, and into other States of the United States to his said vendees at their respective points of location and residence. In the course and conduct of his said business respondent William Littman is in competition with other individuals and with firms, partnerships and corporations engaged in the sale and distribution of like products in commerce between and among the various States of the United States, which products so sold and distributed by such competitors are used for purposes similar to those purposes for which respondent's products are used.

William Littman is the sole owner and operator of the business of Imperial Laboratories. Max Littman neither owns or controls or has any interest in the business of Imperial Laboratories.

PAR. 2. Respondent William Littman does business under the name and style of Imperial Laboratories and in the course and conduct of his business causes advertisements, leaflets, booklets, and circulars, describing his permanent hair waving lotion and permanent wave sachets to be sent by mail to customers and prospective customers throughout the United States. Through said means respondent obtains many orders for the hair wave lotion and permanent wave sachets and upon receiving said orders respondent fills the same and completes the sales thus made by causing said products so ordered and sold to be transported from his said place of business in the city of New York, State of New York, to such vendees at their respective points of location in States other than the State of New York.

PAR. 3. In all of his said advertisements, leaflets, booklets, circulars, and other trade literature which he sends to customers and prospective customers, respondent William Littman causes his aforesaid trade name, Imperial Laboratories, to be prominently featured and set forth.

The lotion sold and distributed by respondent is compounded by him at his place of business at 303 Fourth Avenue, New York, N. Y. The lotion is made up of ingredients purchased by him on the open market in New York, N. Y. The only equipment which respondent, William Littman, has at the place where the lotion is compounded consists of three chemical vats or crocks, electrical burning equipment used in burning the ingredients, stoves, and scales for weighing the chemicals. He does not have in his employ any chemist for the compounding or mixing his lotion. He employs two of his brothers, neither of whom are chemists, who mix or compound the ingredients

that make up the lotion. He does employ a consulting chemist who is an instructor at Columbia University. After the lotion has been compounded by respondent at his place of business, this consulting chemist tests the product at the laboratory of Columbia University. But no test of the product is made at the place of business of respondent, William Littman, and at no time or at any place are the ingredients that make up the lotion tested.

A laboratory, for the making and compounding of lotions and other products of the nature of those made and compounded by respondent, William Littman, has in attendance for the purpose of compounding and testing such products, a chemist or chemists. Such laboratory must at least have the following equipment: A microscope and soapstone sink, together with soapstone furnace with a canopy covering thereon to take off the fumes when the fumes burn the different ingredients; glass retort stills to distill different items; proper machines to determine the density of the product; and measuring glasses and different kinds of hydrometers and temperature glasses. Respondent William Littman did not and does not have in his establishment in which his products are prepared, mixed and compounded any of the equipment specified in this paragraph as is necessary for the purpose of analyzing, testing and compounding the product prepared and sold by him nor does he have nor did he have at any time at such establishment a chemist or chemists in attendance for the purpose of analyzing, testing, and compounding his products. Said respondent does not and did not own, operate or maintain a laboratory for testing, analyzing, or compounding the products sold by him as above stated.

PAR. 4. Respondent in his leaflets, booklets, circulars and other advertising literature, makes the following false and misleading statements and representations regarding his products:

Our lotion, which has been perfected by leading chemists, is made of the finest ingredients. It will wave hair of any character without drying or altering its texture * * *.

The felt used in our sachets is treated so that it will absorb the lotion evenly, assuring a uniform steaming of every curl applied.

The permanent hair wave lotion sold and distributed by respondent, William Littman, under the representations hereinabove set out, has not been and is not perfected by leading chemists. The process of putting permanent waves into hair necessarily changes the texture thereof. Respondent's lotion will not serve to wave the hair without altering the texture of the hair. The sachets sold and distributed by the respondent consist of felt attached to pieces of aluminum foil. The felt so sold and distributed has not been treated so that it will

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absorb the lotion evenly, assuring a uniform steaming of every curl to which it is applied.

PAR. 5. There are in the United States many individuals, firms, partnerships, and corporations engaged in the sale and distribution in interstate commerce of permanent hair waving lotions and permanent wave sachets who truthfully and correctly advertise their products and who do not in any way misrepresent their trade status or falsely represent that they maintain and operate a laboratory or laboratories where their products are compounded.

The use of the term "laboratories" or "laboratory" by respondent has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent maintains and operates a laboratory where his products are analyzed, compounded and tested and has the capacity and tendency to cause said public to purchase his lotions because of the erroneous belief so engendered.

The acts and practices all as hereinabove set forth have the capacity and tendency to divert business to respondent, to the substantial injury and prejudice of competitors.

CONCLUSION

The practices of said respondent, William Littman, under the conditions and circumstances hereinbefore set forth are all to the injury and prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce and are in violation 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 and considered by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents thereto, the testimony, evidence, briefs and argument, and the Commission having made its findings as to the facts with its conclusion that William Littman, trading as "Imperial Laboratories" has 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 respondent William Littman, individually and trading as Imperial Laboratories or trading under any other name or names, his agents, representatives, servants and employees, in connection with the sale or offering for sale or distribution of per-

manent hair waving lotions and permanent wave sachets in interstate commerce, do cease and desist from:

(1) Using as a part of his trade name the word "Laboratories" or the word "Laboratory" or any other word or words of similar tenor or effect, unless and until he actually maintains a place where scientific investigations are conducted.

(2) Representing in any manner that respondent's products are manufactured or compounded in a laboratory or laboratories when such is not the fact.

(3) Representing in any manner, directly or indirectly that the permanent hair wave lotion which he sells and distributes, has been perfected by leading chemists or that it will wave hair without altering the texture of the hair.

(4) Representing in any manner, directly or indirectly, that the felt used in the sachets which he sells and distributes, is treated so that it will absorb the lotion evenly, when such is not the fact.

It is hereby further ordered, That the complaint against Max Littman, be and the same hereby is dismissed.

It is further ordered, That respondent William Littman shall within 60 days after the service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
RENESOL CORPORATION AND CHARLES GOLDBLATT
AND MAURICE GOLDBERG, INDIVIDUALLY

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

Docket 2357. Complaint, Apr. 9, 1935—Decision, Aug. 6, 1935

Where a corporation engaged in the sale of a product for the treatment of epilepsy, consisting of phenobarbital and bicarbonate of soda, and called Renesol; and two individuals, its executive officers, who controlled and owned all its stock and formed, controlled and directed its policies, practices and management; in offering and describing said preparation in advertisements, in newspapers and periodicals of general circulation, in letters in reply to inquiries, and in circulars and other printed matter—

Represented directly or by implication that said preparation constituted a cure for said ailments through such statements, among numerous others, in their extensive trade literature as "has helped thousands of epilepsy sufferers regain a new life of joyous health", "Medical science triumphs", "Complete relief from all fits and embarrassments", "This marvelous discovery", etc., "Gain health and happiness", and, while professing therein to disavow any claims to a permanent cure for said ailment, nevertheless through testimonial statements of physicians highly praising said preparation and their results therewith, and in other ways through such statements as "It is admitted by all honest doctors, and by healers of every school that there is no *single medicine*, no *special* method of treatment which will cure epilepsy", and in numerous other statements emphasizing the importance of diet and other matters, adroitly suggested cure or permanent relief through use of said preparation; facts being said preparation, though a useful agent for relieving said ailment, ameliorating its discomforts and prolonging the interval between attacks, is not a cure therefor and there is no known cure therefor;

With capacity and tendency to mislead purchasing public into belief that through use thereof, cure or permanent relief may be effected if accompanied by correct hygienic habits and proper course of diet, and to divert trade to it from competitors offering like or other competitive products for the treatment of said affliction and other nervous conditions generally:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. James M. Brinson for the Commission.

Nathan D. Shapiro & Brothers, of Brooklyn, N. Y., for respondent.