

Complaint

21 F. T. C.

IN THE MATTER OF

ROSE R. SCOTT, TRADING AS KOTALKO SALES
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2282. Complaint, Jan. 22, 1935—Decision, Nov. 27, 1935*

Where an individual, engaged in the sale and distribution of two proprietary preparations, consisting of a product to be rubbed into the scalp and over the hair, and an auxiliary soap, which it sold under the names "Kotalko" and "Kotalko Soap", respectively, to the consuming public throughout the several States—

Represented that said preparations would eliminate dandruff, stop falling hair, and grow hair on bald heads, through advertisements in newspapers and magazines, and that, as a result of use thereof, beautiful hair had replaced baldness and dandruff had entirely disappeared, through form letters, circulars, and pamphlets setting forth purported testimonials, accompanied by alleged photographs exhibiting users' fine hair, and emphasized such purported letters or testimonials as supplying proof of the results and merits of said product;

Facts being that preparations in question, as disclosed by expert testimony bearing on therapeutic uses and efficacy thereof, were not an effective remedy or cure for the various forms of alopecia, and that aforesaid representations as to the merits, functioning, or efficacy thereof were exaggerated, misleading, and unwarranted, and did not truthfully and accurately state their therapeutic value;

With tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said products would eliminate dandruff, grow hair on bald heads and beautify the hair, and to induce them to buy and use the same because of such erroneous beliefs, and to divert trade to said individual from competitors engaged in the sale of treatments for hair and scalp, among whom there are those who in no wise misrepresent the efficacy or therapeutic value of their competing products, and with effect of so diverting, to the substantial injury and prejudice of such competitors:

Held, That such acts and practices were to the prejudice of the public and competitors, and constituted unfair method of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. J. Bond Smith and *Mr. Benjamin G. Wilkinson*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Rose R. Scott, trading as Kotalko Sales Company, hereinafter referred to as respondent, has been and now is 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 in that respect as follows:

PARAGRAPH 1. The respondent, Rose R. Scott, trading under the name of Kotalko Sales Company, whose principal office and place of business is at 130 West 17th Street, New York City, has been since 1933, and is now engaged in the business of advertising and selling, or causing to be sold, throughout the country, Kotalko and Kotalko Soap, a preparation advertised to produce a luxurious growth of hair on bald heads, eliminate dandruff, and stop falling hair; respondent sells, or causes to be sold, said products, through jobbers and drug stores throughout the country, to the public, and also sells said products through the United States mail, direct to the purchasing public, residing in various States of the United States. Respondent causes said commodities when so sold to be transported from its said place of business in New York City, into and through other States of the United States, to said purchasers at their respective points of location.

PAR. 2. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in compounding, selling, and distributing in interstate commerce medicinal preparations intended and used for the same general purposes for which respondent represents her said medicine to be a treatment and remedy, as hereinafter set out; such individuals and corporations have caused and do now cause their said preparations when so sold by them, to be transported through various States of the United States, into and through States other than the State of origin of the shipment thereof. Respondent has been since 1933 and is now in competition in interstate commerce in the sale of her said medical preparation with such other individuals, firms, and corporations.

PAR. 3. Respondent, in the course of her business, has offered for sale and sold a preparation represented and advertised to eliminate dandruff, stop falling hair, grow new hair on bald heads, and beautify hair. In advertisements, form letters, testimonials, and other advertising matter, respondent has represented said products to be a panacea for the aforementioned ailments of the scalp and hair.

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PAR. 4. In truth and in fact, said preparation will not cure dandruff, nor prevent the loss of hair; neither will it stimulate the roots of the hair nor produce a luxuriant growth of hair. Most of the claims in the advertising and testimonials are extravagant, unwarranted, and misleading.

PAR. 5. The representations of respondent have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that her said preparation is a remedy and competent and adequate for the ailments which it is advertised and recommended by respondent to cure; to induce them to buy and use the same, because of such erroneous belief, so engendered; such representations divert trade to respondent from legitimate competitors who truthfully advertise similar preparations and who are engaged in the sale in interstate commerce of preparations intended for and used for the ailments of the human body for which respondent represents her said preparation to be a remedy and competent and adequate treatment, as aforesaid.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's 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", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provision 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, on January 22, 1935, issued and served its complaint in this proceeding upon respondent Rose R. Scott, trading as Kotalko Sales Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by J. Bond Smith, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in

defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rose R. Scott, is an individual trading as Kotalko Sales Company. Her principal office and place of business is at 130 West 17th Street, New York City. Respondent now is and has been, since 1933, engaged in the sale and distribution in interstate commerce of Kotalko and Kotalko Soap, proprietary preparations for the hair and scalp, to the purchasing and consuming public throughout the several States of the United States, and causes the said products, when so sold, to be transported from her place of business in New York City through and into other States of the United States to her said vendees at their respective points of location. In the course and conduct of her said business, respondent is in competition with other individuals and with firms, partnerships and corporations engaged in the sale and distribution of similar products in commerce between and among the various States in the United States.

PAR. 2. Kotalko is prepared and sold by respondent in liquid and solid form. The product includes the following ingredients:

Pilocarpine Hydrochloride	Oil Camphor—Sassy
Resorcine	Sulphur (resublimed)
Oleoresin Capsicum Solution	Petrolatum—dark green
Bear Oil	Petrolatum—light amber
Castor Oil	Paraffine

Kotalko Soap is advertised and sold by respondent as an auxiliary to Kotalko. The instructions are to rub Kotalko into the scalp and over the hair and at intervals to shampoo the hair with Kotalko Soap.

PAR. 3. Respondent, in the course and conduct of her said business as described in paragraph 1 hereof, caused advertisements to be inserted in newspapers and magazines circulated to the purchasing public in which it was represented and implied that Kotalko and Kotalko Soap will eliminate dandruff, stop falling hair, and grow hair on bald heads.

Respondent also advertised her products through form letters, circulars and pamphlets in which appeared purported testimonials by users of Kotalko and Kotalko Soap. Accompanying said testimonials and as a part thereof appeared the alleged photographs of the said users of Kotalko exhibiting a fine suit of hair.

Some of the testimonials were to the effect that through the use of Kotalko and Kotalko Soap beautiful suits of hair had been produced on heads which formerly were bald. Others were to the effect that dandruff had entirely disappeared since the person began using Kotalko.

Some of the headlines above the testimonials were:

(a) **MILLIONS OF NEW HAIRS GROW ON SMOOTH HEADS**

Marble is beautiful when smooth and polished. And some bald heads appear to be just as smooth as marble. But who wants to have a "marble dome?" Many former smooth heads are now growing new hair. Why? Because starving hair roots are being vitalized with Kotalko and Kotalko Soap.

(b) **CONVINCE YOURSELF**

How delightful it is to possess a full growth of hair! No one knows this better than one who has new hair, after having faced the spectre of partial or complete hair loss. Therefore, what can be more convincing than letters from those who, through personal use, found a way to encourage such results through the use of Kotalko, and Kotalko Soap? Let these testimonials be your inspiration. Determine that you also will become entitled to join the enthusiastic group who recommend Kotalko, and Kotalko Soap.

(c) **WHAT MADE THEIR HAIR GROW? HERE IS THE ANSWER**

PAR. 4. Expert testimony has been taken with regard to the therapeutic uses and efficacy of respondent's products. That testimony is to the effect, and the Commission finds as a fact, that Kotalko and Kotalko Soap are not an effective remedy or cure for the various forms of alopecia. In conformity with such testimony the Commission finds that said representations of respondent in regard to the efficacy of Kotalko and Kotalko Soap are exaggerated, misleading, unwarranted in fact and that they do not truthfully and accurately state the therapeutic value thereof.

PAR. 5. Representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that respondent's products, Kotalko and Kotalko Soap will eliminate dandruff, grow hair on bald heads and beautify the hair. Said representations of respondent have had and do have a tendency and capacity to induce members of the public to buy and use respondent's products because of the erroneous beliefs engendered as above set forth and to divert trade to respondent from competitors engaged in the sale in interstate commerce of treatments for the hair and scalp.

PAR. 6. There are, among the competitors of respondent, those who, in the sale of their products, in nowise misrepresent the efficacy or therapeutic value of their competing products, and respond-

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ent's acts and practices as hereinbefore set forth tend to and do divert trade to respondent from her competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of respondent are to the prejudice of the public and of respondent's competitors, and under the conditions and circumstances stated in the foregoing findings, constitute unfair methods of competition in interstate commerce, and constitute a violation of the 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 respondent, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by DeWitt T. Puckett, counsel for the Commission, and by J. Bond Smith, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent 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 ordered, That the respondent, Rose R. Scott, her agents and employees, in connection with the advertising, offering for sale and sale in interstate commerce, or in the District of Columbia, of the preparations now designated by her as Kotalko and Kotalko Soap:

Cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that said preparations, or either of them, by whatever name or description known, will eliminate dandruff or grow hair on bald heads or that they are efficacious as treatments for the various forms of alopecia.

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

Complaint

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IN THE MATTER OF

LOUIS DUBINOFF, TRADING AS FAMOUS PURE SILK
HOSIERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2297. Complaint, Feb. 14, 1935—Order, Nov. 27, 1935*

Where an individual, engaged in the sale of hosiery through salesmen who solicited and transmitted orders therefor—

- (a) Falsely represented that he owned, operated or controlled a mill or factory in which products dealt in by him were made;
- (b) Represented that he was a direct mill distributor, facts being he purchased products dealt in by him from manufacturers thereof or through their agents and from jobbers and wholesalers for resale on his own account, and was not such a distributor, but a retailer of hosiery;
- (c) Falsely represented that the hosiery offered and sold by him was "run-proof", facts being it was not run-proof as known to trade and public, meaning that a run would not occur when a thread breaks and releases a second thread with a resulting so-called "run"; and
- (d) Guaranteed his said product as "run-proof", facts being customers had at times neither received hosiery purchased nor any refund of the money paid therefor, and had returned hosiery as unsatisfactory and received no return or refund of the money paid or other hosiery in place thereof;

With capacity and tendency to mislead the purchasing public into the belief that said representations were true and into the purchase of its said product in reliance on such erroneous beliefs, and to divert trade to said individual from competitors offering and selling hosiery truthfully advertised and described, through salesmen or solicitors, mail orders and otherwise:

Held, That such practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. James M. Brinson for the Commission.

Mr. Jacob Lipman, of Newark, N. J., 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 Louis Dubinoff trading as Famous Pure Silk Hosiery Co., hereinafter called 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