

Complaint

IN THE MATTER OF

VASCO PRODUCTS, INC. AND WILLIAM M. LEA AND
KITTIE M. LEA, DOING BUSINESS AS LEA'S TONIC
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2139. Complaint, Dec. 21, 1933—Decision, Dec. 10, 1935*

Where a corporation engaged in the sale of a proprietary hair preparation, and two individuals, partners, owners of the secret formula thereof; in advertising and describing said preparation and its nature and results in newspapers, periodicals, circulars and pamphlets, and through purported testimonials from users—

- (a) Designated and described the same as a tonic, and represented that, through its application and use on the scalp or hair, bodily functions were stimulated so that pigmentation was produced and color imparted to the hair, facts being that there is nothing known to medical science which, taken internally or applied externally, will stimulate the chromatophores or melanoblasts that cause hair pigmentation in the human system, or cause them to function so that pigment will be supplied to the hair and give it color, and said preparation, the ingredients of which had long been well known to physicians and dermatologists, was not a tonic and had no tonic effect upon any part of the system, and its functioning in imparting color to the hair was that of a dye or dying agent; and
- (b) Represented that use of said preparation would cure dandruff and make the hair grow abundantly and stop its falling out, facts being there was no internal or external treatment known to medical science which would achieve those results;

With effect of misleading and deceiving dealers in and users of proprietary articles or preparations for the hair and scalp into believing such representations to be true, and into purchasing said hair preparation instead of products of competitors, and with capacity and tendency so to mislead and deceive, and with result of thereby diverting trade from competitors to themselves:

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

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

Mr. Edward E. Reardon for the Commission.

Mr. George E. Edelin, of Washington, D. C. and *Mr. Edwin R. Dickenson*, of Tampa, Fla., for respondents.

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

Complaint

21 F. T. C.

Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Vasco Products, Inc., and William M. Lea and Kittie M. Lea, copartners, doing business under the trade name Lea's Tonic Company, and hereinafter referred to as respondents, have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said act and states its charge as follows:

PARAGRAPH 1. Respondent Vasco Products, Inc., is a corporation organized prior to the year 1930 under the laws of the State of Delaware and having at all times since its organization a principal place of business at Brentwood, Md.

PAR. 2. Respondents William M. Lea and Kittie M. Lea are individuals residing in the city of Tampa, Florida, and they are and have been since prior to the year 1930 engaged in business under the trade name Lea's Tonic Company with a principal place of business at Brentwood, Md.

PAR. 3. During all of the times since on or before the year 1930 the respondents have been engaged in the sale of a proprietary article sold in bottles under the name "Lea's Hair Tonic" and purporting to be for the treatment of the hair and scalp.

PAR. 4. During the times above mentioned the respondents have sold and still sell Lea's Hair Tonic to individuals, firms and corporations, dealers in and users thereof, located in the various States of the United States other than Maryland or the State of origin of the shipment, and the respondents, respectively, have caused and still cause Lea's Hair Tonic when so sold by them to be transported from Maryland, or the State of origin of the shipment, to, into and through other States to the purchasers.

PAR. 5. During the times above mentioned other individuals, firms and corporations are and have been engaged, respectively, in the sale of various proprietary articles for the treatment of the scalp and hair, including proprietary or other articles for the same purposes of treatment of the scalp and hair as Lea's Hair Tonic, to purchasers, dealers and users thereof, located in the various States of the United States and they have caused their said proprietary articles when so sold by them, respectively, to be transported from the State of the seller, or the State of origin of the shipment, to, into and through other States to the purchasers.

PAR. 6. During the times mentioned and referred to above the respondents have been and they still are in competition in interstate commerce in the sale of Lea's Hair Tonic with the said other individuals, firms and corporations referred to in paragraph 5 hereof.

PAR. 7. During the times above mentioned the respondents have caused advertisements of Lea's Hair Tonic to be published in newspapers and periodicals circulating among the public in the various States of the United States and have caused advertisements to be printed in circulars and pamphlets and distributed in the packages in which Lea's Hair Tonic have been sold by them to the trade and public, in which among many other similar statements are statements quoted in part as follows:

Lea's works gradually in the most natural-like manner, depending on how long and how gray you are and the condition of the scalp and hair. Gradually the hair from scalp upwards begins turning, shade by shade back to a youthful deep shade, of blonde, auburn, red, black or whatever basic color your hair was originally. There are some three thousand shades of color in human hair. No dye expert can paint the hair as exquisitely as nature the exact shade most becoming to your eyes, complexion and beauty. Several of different complexion may use out of the same bottle—each goes back to their own color or shade of hair, users declare in amazement.

PAR. 8. The respondents in some of the advertisements above referred to caused statements to be published to the effect that one C. J. Mains is a nationally known expert on gray hairs and purporting to quote him in part as follows:

I can show men and women in two minutes how to get rid of their gray hairs and never have another

and

In the old days you had to dye your hair—like we still must get false teeth, but not now. You get a bottle of Lea's Hair Tonic. Rub into scalp and stimulate nature to renewed vigor, same as you take a tonic, a laxative to stimulate a sluggish system. You can't rub a tonic on your gums and grow new teeth, but you sure can keep your hair young looking, free of gray * * * Just a few drops at night on the scalp does the work * * * Away goes gray hair, dandruff and itchy scalp. Hairs become heavier and good looking. Takes ten years off your age. Goes right back to youthful color no matter what shade of hair you originally had. Doesn't change the other hairs * * *.

PAR. 9. Lea's Hair Tonic in its effect upon the color of the hair of the user is a stain or dye and in causing gray hair of the user to appear for a time of a different color, Lea's Hair Tonic acts upon the hair as a stain or a dye.

The changed color produced in applying Lea's Hair Tonic to gray hair of the user is not a color produced by nature or by natural causes. Lea's Hair Tonic has no effect in changing the color of the

Complaint

21 F. T. C.

hair growth which appears subsequent to the application of the said tonic.

C. J. Mains mentioned in the above advertisements of the respondents referred to in paragraph 8 hereof is not an expert on human hair in any respect and is not a nationally or locally known expert on the human hair.

Lea's Hair Tonic does not cure the condition of the scalp known as dandruff and does not cause human hair to grow or prevent baldness.

PAR. 10. The respondents, by means of the statements in their advertisements above mentioned and referred to, falsely represented to the public, purchasers of proprietary or other articles and users of the same, that Lea's Hair Tonic is not a dye or a stain; that its use by purchasers would cause the hair of the user previously grown gray thereafter to grow naturally in its original natural color; that its use would cure and prevent the return of the condition of the scalp known as dandruff; that its use would cause hair to grow and prevent baldness of the user's head.

The respondents further falsely represented in their said advertisements that C. J. Mains, above mentioned, was an expert on the subject of the human scalp and hair and falsely represented that he was nationally known as such an expert, and the respondents, by such statements in their said advertisements, exaggerated and increased the power and influence of the statements in the advertisements, attributed to said Mains personally, and purporting to have been made by him, to deceive and mislead the public into the belief that the above false statements and representations regarding Lea's Hair Tonic and its use were true.

PAR. 11. The publication and use of the statements mentioned and referred to in the said advertisements have the tendency and capacity to mislead and deceive and they have mislead and deceived members of the public into believing that the said statements were and are true; and in reliance upon that belief into purchasing and using Lea's Hair Tonic in preference to preparations or proprietary articles sold by respondents' competitors; and have the further tendency and capacity to divert trade and they have caused trade to be diverted from competitors of respondents, mentioned and referred to in paragraph 5 hereof, to the respondents.

PAR. 12. The above acts and things done and caused to be done by the respondents are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent 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 on the 21st day of December, 1933, issued and served its complaint in this proceeding upon the respondent Vasco Products, Inc., and the respondents William M. Lea and Kittie M. Lea, doing business as copartners under the trade name Lea's Tonic Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of the complaint, and the filing of respondents' answers thereto, testimony and evidence were introduced by Edward E. Reardon, Esq., attorney for the Commission, in support of the allegations of the complaint and by George E. Edelin, Esq., attorney for the respondents, in opposition thereto, before John W. Norwood, Esq., an examiner of the Commission duly designated therefor by the Commission; and the testimony and evidence introduced were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer to the complaint, the testimony and evidence, and upon the briefs and oral argument of counsel for the Commission and for the respondents; 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 Vasco Products, Inc., is a corporation organized prior to the year 1930 under the laws of the State of Delaware and having a principal place of business at Brentwood, Maryland, now and at all times since its organization as a corporation, except that for a certain period of about two years its place of business was in Washington, D. C.

PAR. 2. The respondents William M. Lea and Kittie M. Lea are individuals residing in the city of Tampa, Florida, and the said respondents Lea are the owners of the formula under which a preparation called "Lea's Hair Tonic" was compounded and sold by them under the trade name Lea's Tonic Company for a period of about twelve years immediately prior to on or about April 20, 1926.

Findings

21 F. T. C.

PAR. 3. On or about April 20, 1926, respondents William M. and Kittie M. Lea leased to respondent Vasco Products, Inc., for a period of 99 years the exclusive right to advertise, sell and distribute in consideration of a royalty payment to them, the proprietary article called Lea's Hair Tonic in accordance with the formula under which the respondents Lea had been manufacturing and selling the article and among other things it was agreed between the respondents Lea and respondent Vasco Products, Inc., that from time to time the respondent Vasco Products would give to the respondents Lea orders for the manufacture of the said proprietary article and furnish them with said orders suitable containers in which to place the product when manufactured and in which to ship the same according to the directions of Vasco Products, Inc. to the purchasers from whom Vasco Products, Inc., had received the orders which were transmitted to respondents Lea, and the respondents Lea agreed among other things to fill promptly all orders received by them for the said proprietary article from Vasco Products, Inc., and to manufacture and to ship the products so ordered in accordance with shipping instructions received by them from Vasco Products, Inc., until such time as the parties to the agreement should arrange for the manufacture of the said proprietary article by Vasco Products, Inc.

For a considerable period of time after the respondents Lea leased the exclusive right to the Vasco Products, Inc., to manufacture and to sell the said proprietary article, the respondents Lea under the agreement above mentioned manufactured and shipped the proprietary article called Lea's Hair Tonic on the orders of respondent Vasco Products, Inc., as it was sold during said time by the respondent Vasco Products, Inc. Later the respondents Lea, to comply with the contract with Vasco Products, Inc., caused the said proprietary article to be manufactured for them and put up for shipping on orders of Vasco Products, Inc., according to the formula for the product, by Mr. H. O. Mains, vice president and general manager of the respondent Vasco Products, Inc. to whom, personally, the respondents Lea made known the formula for compounding the product under an agreement with him that he would not divulge the formula to anyone else and on the understanding that in compounding or manufacturing the proprietary article to fill the orders of Vasco Products, Inc., for its sale, that the said Mains was in the employ of and acting as the agent of the respondents Lea and not as an employee or agent of the respondent Vasco Products, Inc.

PAR. 4. During all of the times since on or about April 20, 1926, the respondent Vasco Products, Inc. has been engaged in the sale of the proprietary article, Lea's Hair Tonic, and during said times it has

sold and still sells the said proprietary article to individuals, firms and corporations, dealers in and users of the proprietary article, purchasers thereof, located in the various States of the United States other than Maryland or the State of origin of the shipment, and Vasco Products, Inc., has caused and still causes the said proprietary article when sold by it to be transported from Maryland, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 5. During all the times mentioned and referred to in paragraph 4 hereof, other individuals, firms and corporations are and have been engaged, respectively, in the sale of various proprietary articles for the treatment of the scalp and hair, including proprietary articles for the same purposes of treatment of the scalp and hair as the respondents' proprietary article, Lea's Hair Tonic, to purchasers, dealers in and users thereof, located in the various States of the United States other than the State of the seller, or the State of origin of the shipment, and they have caused their said proprietary articles when so sold by them, respectively, to be transported from the State of the seller, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 6. During the times mentioned and referred to in paragraphs 4 and 5 hereof, the respondent Vasco Products, Inc., is and has been in competition in interstate commerce in the sale of the proprietary article Lea's Hair Tonic, with the other individuals, firms and corporations referred to in paragraph 5 hereof.

PAR. 7. The respondents' proprietary article, called Lea's Hair Tonic, is a colorless liquid having the odor of bay and it is essentially a saturated solution of lead chloride and composed substantially of alcohol, water, glycerin, sulphur and lead chloride, with traces of alkaloid and perfume. The alcohol is present to the amount of 14.6% by volume, glycerin to the amount of 10.1 grams per 100 cubic centimeters and lead chloride to the amount of 0.87 grams per 100 cubic centimeters. Chemical tests made for cantharides in the chemical analysis of the proprietary article showed none present.

PAR. 8. All of the ingredients in the composition of Lea's Hair Tonic and effects produced by them in their application to the hair and scalp are and have been well known even in ancient times to physicians and dermatologists. Lead and sulphur are two ingredients that were used by the Egyptians in the distant past to dye hair.

PAR. 9. Hair grows from within hair follicles, which are invaginations of the epidermis or outer epithelial portion of the skin into

Findings

21 F. T. C.

the deeper layers of the skin, or dermis, and underlying tissue. The hair grows from certain cells or papillae at the base of the follicle. Surrounding the papillae are certain cells called either chromatophores, or melanoblasts. The hair shaft, roughly speaking, is divided into a cortex and medulla, with the cortex outside and a hair sheet or cuticle outside of the cortex.

The hair shaft is not a living thing. It is a mass of closely packed horny cells, without life, without blood, without lymph and without nerves. It is a dead structure, as dead as a piece of finger-nail or cow's horn.

The composition of human hair resembles in general the composition of hair of other animals. Eighty-five percent of the composition of human hair is what is known as keratin and that is composed of a number of elements. The various constituent elements of hair keratin, one of which is cystine sulphur, are in general found in the same relative proportions in other animal hair that they are found in human hair. Cystine sulphur is an elemental form of sulphur and in elemental form sulphur is said to be insoluble in water or in alcohol, although there is no substance known that is absolutely insoluble.

The function of the chromatophores or melanoblasts above mentioned is to extract melanin, the pigment-forming matter, from the blood which is then distributed as pigment in the hair matrix cells of the hair bulb, commonly called the root of the hair. The pigment when formed or distributed in the hair matrix cells of the hair bulb is carried upward with the growth of the hair. There is no pigment formed in the hair shaft although it is seen in the hair shaft, more towards the medulla and not on the outside.

PAR. 10. Normal pigment formation is a living process and cannot take place in a dead thing, the shaft of the hair, so that any method which causes coloration in hair which has changed from its natural original color, for instance, to gray or white, would have to be a life process, the result of a process of rejuvenation or bringing back to life, if it really restored the normal pigment-forming function. The base of the hair follicle is about $\frac{1}{4}$ inch below the scalp. Only the upper one-third part of the hair in the follicle can be reached by any kind of dye or other liquid preparation, even by such as are rubbed in by the most intensive rubbing. The lower two-thirds of the hair in the lower part of the follicle, or the hair bulb at the base of the follicle, cannot be touched by any liquid sought to be introduced into the hair follicle. There is no medical treatment that can be applied externally on a person's head, which will reach the base of the hair follicle and there is no medical treatment known to medical science that has caused or can cause pigment formation in hair.

PAR. 11. Rabbit hair or fur, while it may not be said to be exactly the same as human hair, is of the same general composition. Its composition is chiefly keratin and the keratin is of the same general composition as the keratin of human hair and includes among its constituent elements, sulphur in fixed form. The albino rabbit, especially the albino rabbit with pink eyes, is absolutely incapable of hair pigment formation. Hair pigment formation is due to the presence of chromatophores or melanoblasts. Only melanoblast cells are capable of forming hair pigmentation and an albino rabbit has no melanoblast or pigment forming cells and there is no pigment in its hair or fur and coloration of the fur of an albino rabbit could not be formed by the application of the respondents' proprietary article, called Lea's Hair Tonic, by reason of any action which the application of it could have upon melanoblasts or pigment forming cells of an albino rabbit or upon pigment present by reason of such chromatophores or melanoblasts.

There is no difference in the characteristic composition of the fur of albino rabbits and normal pigmented fur except that the pigment is not present in the fur of the albino rabbit. Normal pigment when present might have some added chemical substance in its composition. Human gray hair is due to the fact that the melanoblasts have ceased functioning or no longer exist. Sometimes melanoblasts are present in human beings and dormant, and so not functioning, as in a case where disease has brought temporary baldness. In such case the first hair to reappear may be colorless and later may resume its normal color because the dormant melanoblasts resume their natural function of supplying pigment.

PAR. 12. Sulphur in human or other animal hair, known as cystine sulphur, is sulphur in elemental form and like the sulphur in the composition of respondents' Lea's Hair Tonic is said to be practically insoluble in water or alcohol. Young hair carries its sulphur entirely as cystine sulphur. But, cystine sulphur can to some extent readily be changed in form so that it will become more reactive to and combine with lead salts. The application of water to the hair causes a slow disintegration of the original protein, or keratin substance, with the result that the original cystine to some extent no longer gives cystine reactions and has become to some extent more reactive to lead salts. When the hair is washed a change takes place in two ways as shown by analysis of the hair. The total sulphur in the washed hair will have decreased, depending on the amount of exposure to water and the temperature of the water, and the sulphur remaining in the hair can then no longer be accounted for completely as cystine sulphur. The water used to wash the hair will contain some of the sulphur and

Findings

21 F. T. C.

that sulphur, depending on the washing conditions, may also contain minute traces of cystine, but most of the sulphur in the wash water will be in simpler form than cystine sulphur and reactive to lead salts. Some of the sulphur on the washed hair itself will also be more reactive to lead salts than the sulphur was when in its original cystine form. The change in the sulphur content of the hair results from a slow decomposition in which the sulphur content is changed while in or on the hair and slowly removed from the hair.

When the hair of adult animals is examined, the total sulphur may be the same as in the hair of a young animal or in recently produced hair, but in the adult animal the cystine sulphur does not account for all the sulphur in the hair. This difference between the hair of young animals and adult animals results from such things as combing of the hair, exposure to the elements, the weather, etc., which produce a change similar to or identical with that caused by the application of water in making the sulphur more reactive toward lead salts. In the change of sulphur from the cystine form, hydrogen sulphide is produced and that form of sulphur is also reactive to lead salts.

PAR. 13. The reaction of lead salts to sulphur of human or other animal hair depends to a considerable extent on the conditions under which the reaction is produced. In combining with the sulphur it may result under some conditions in a light yellow color and under other conditions will vary from light yellow to a very dark brown, depending upon the amount of lead sulphide produced by the reaction or combination of the lead salts and sulphur, and upon the size of the particles produced. And, also depending upon the number of times lead salts are applied to hair containing sulphur in reactive form and the thickness of the film of lead sulphide caused thereby, a deeper shade of color will result following each application up to a dark brown shade, approaching black, and, which may be said by some persons to be black, when not closely examined.

PAR. 14. The composition of cotton is cellulose. It contains no sulphur. Lead salts applied to untreated cotton fabric does not cause the color to be changed. When sodium thiosulphate, itself a colorless solution in water, is first applied to cotton, the cotton still remains white. When, however, Lea's Hair Tonic is applied to cotton which has been treated with a colorless solution of sodium thiosulphate, the lead chloride in the preparation combines with the sodium thiosulphate and causes the cotton to become dark colored. Repeated applications of Lea's Hair Tonic to such treated cotton causes the cotton to assume a still darker shade with each subsequent application until it finally is of such dark brown color that it appears black.

PAR. 15. Lea's Hair Tonic applied to the hair or fur of an albino rabbit causes the hair or fur to assume a yellowish tinge. As the application to the hair or fur of the albino rabbit is continued it causes a progressive coloration of the treated area towards a brownish or brownish black color.

PAR. 16. When Lea's Hair Tonic is applied to human gray hair which has been severed from a person's head, the hair assumes a yellowish tinge. Human gray hair so treated for ten days was caused to become colored a yellowish tinge on the ends and gradually a dark brown away from the ends.

By the use of the respondents' proprietary article the hair of the user gradually begins turning progressively, shade by shade from a light yellow or brown to a color approaching black, depending upon the length of time the preparation is used on the hair, and results in the change from gray hair are obtained by repeated applications of the preparation in from 10 days to 4 or 5 weeks in some cases according to the individual and the color desired, or which may approximate the shade or color that, in the opinion of the user, is similar to the color of the user's hair before it became gray. After the hair of the user has been brought back through various shades to the color desired, it is necessary that the use of the preparation should be continued once every week or ten days in order to keep the hair the color which it was caused to assume by the use of the product. When the use of the preparation is finally discontinued, the user's hair returns to its former gray or the color it had prior to the use of the preparation.

PAR. 17. There is a normal amount of fine scalings shed from normal scalps, just as hair and nails grow and are shed. A small number of these scales are normal on normal scalps. Dandruff, clinically speaking, consists of an abnormal quantity of fine scalings from the scalp and it is definitely indicated by the term "pityriasis capitis", rather than by the term "seborrhea", a term that is also used to indicate a different condition, namely, an oily flow of sebaceous matter from the sebaceous glands. There are several theories as to the cause of excessive exfoliation of fine scales from the scalp called "dandruff." The condition is said to be a symptom of a disease that causes dandruff, one theory being that it is of parasitic origin and caused by different parasites but the consensus of opinion of medical authorities, specialists in dermatology, is that the cause of dandruff is unknown and that nothing is known that will permanently cure dandruff.

There are innumerable things which by their application to the scalp of a person afflicted with dandruff will remove the dandruff scales present on the scalp at the time of their application. The re-

Findings

21 F. T. C.

spondents' proprietary article, called Lea's Hair Tonic, is one of such agencies, and soap and water is another that will equally effect the removal of dandruff scales. Beyond such use in removing the loose scales present at the time of its application and known as dandruff, the respondents' proprietary article has no remedial effect on the cause of the dandruff, no effect in preventing the formation of dandruff scales after its use, although if the scalp of the user is in an itchy condition it may perhaps relieve that itchy condition.

PAR. 18. The word "tonic" is defined adjectively in the Oxford English Dictionary, in physiology and in pathology, as "pertaining to, consisting in, or producing tensions; especially in relation to the muscles"; and, "pertaining to, or maintaining, the tone or normal healthy condition of the tissues or organs"; and is defined, in medicine, as "having the property of increasing or restoring the tone or healthy condition and activity of the system or organs; strengthening, invigorating, bracing."

PAR. 19. The word "dye" as a verb is defined in the Oxford English Dictionary, transitively, as follows: "to tinge with a color or hue; to fix a color in the substance of; to color, stain."

The verb "stain" in the Oxford English Dictionary, it is said, is derived from Old French and in that dictionary is defined as a synonym of the verb "to dye", as "of something dyed or colored; to impart its color to (something in contact). Also, in wider use (e. g., said of a chemical reagent), to alter the color of (something to which it is applied)."

The word "teindre" in the French language is defined in Cassell's New French Dictionary, as a verb, meaning "to dye, to tinge, to stain, to color."

PAR. 20. The respondent Vasco Products, Inc., has caused statements and representations to be published in newspapers and periodicals circulating among the public in the various States and in circulars and pamphlets distributed in the packages in which the preparation, Lea's Hair Tonic, was caused to be sold by it to the public, among other similar statements, as follows:

"Lea's works gradually in the most natural-like manner, depending on how long and how gray you are and the condition of the scalp and hair. Gradually the hair from scalp upwards begins turning, shade by shade back to a youthful deep shade, of blonde, auburn, red, black or whatever basic color your hair was originally. There are some three thousand shades of color in human hair. No dye expert can paint the hair as exquisitely as nature the exact shade most becoming to your eyes, complexion and beauty. Several of different complexion may use out of the same bottle—each goes back to their own color or shade of hair, users declare in amazement.

I can show men and women in two minutes how to get rid of their gray hairs and never have another.

Findings

In the old days you had to dye your hair—like we still must get false teeth, but not now. You get a bottle of Lea's Hair Tonic. Rub into scalp and stimulate nature to renewed vigor, same as you take a tonic, a laxative to stimulate a sluggish system. You can't rub a tonic on your gums and grow new teeth, but you sure can keep your hair young looking, free of gray * * * Just a few drops at night on the scalp does the work * * * Away goes gray hair, dandruff and itchy scalp. Hairs become heavier and good looking. Takes ten years off your age. Goes right back to youthful color no matter what shade of hair you originally had. Doesn't change the other hairs.

* * * Users say it has made their hair grow abundantly and absolutely stopped it falling out. You will be delighted we feel sure.

The respondent Vasco Products, Inc., receives inquiries through the United States Mail from members of the public concerning the preparation, Lea's Hair Tonic, and its use and in answering such inquiries frequently sends copies of testimonials purporting to have been received from prior users of Lea's Hair Tonic and containing statements of such users to the effect that the use of Lea's Hair Tonic has stopped the hair of the used from falling out and caused the hair to grow, that it cured the condition known as dandruff with which the user was afflicted, and also in some instances that the use of the preparation caused the natural color of the user's hair, which had changed to gray, to be restored to its former youthful color.

PAR. 21. The vice president and general manager of the respondent Vasco Products, Inc., was at all times familiar with the advertisements of Vasco Products, Inc., above mentioned and referred to, which were caused by the said respondent to be published in newspapers and periodicals and with the testimonials above mentioned and referred to, purporting to have been received from members of the public following the use of Lea's Hair Tonic, and had knowledge of the statements caused to be made in the advertisements of the respondent, Vasco Products, Inc., and in the testimonials said to have been received from the users of Lea's Hair Tonic; and during all of said times, while acting as the vice president and general manager of the respondent Vasco Products, Inc., he was also acting as the agent of the respondents William M. Lea and Kittie M. Lea, in compounding Lea's Hair Tonic from the ingredients composing it and in causing it to be put up in the containers and cartons in which it was sold; and during such times he had charge of placing the circulars above mentioned in the cartons in which Lea's Hair Tonic was sold and in answering replies to inquiries received from members of the public. In answering such inquiries he caused printed circulars to be inclosed to such members of the public, containing parts of four or five testimonials purporting to have been received from other members of the public containing statements concerning the use

Findings

21 F. T. C.

and effect of Lea's Hair Tonic by them, such as the testimonial statements above referred to.

The respondents William M. Lea and Kittie M. Lea had knowledge of the statements and representations made by Vasco Products, Inc., above mentioned and referred to, to members of the public concerning Lea's Hair Tonic, its use and effect, and the respondents Lea made similar representations and to the same effect to members of the public concerning Lea's Hair Tonic prior to the time when they leased the right to the respondent Vasco Products, Inc., to manufacture and distribute Lea's Hair Tonic in interstate commerce.

PAR. 22. As above stated, there is no medical or other treatment known to medical science that will remove the cause of dandruff or cure that condition. There is nothing known, which, taken internally or applied externally, will stimulate the chromatophores or melanoblasts that cause hair pigmentation in the human system, or cause them to function so that pigment will be supplied to the hair and give it color. There is nothing known to medical science which taken internally or applied externally as a treatment for the hair and scalp will cause the hair of the user to grow or prevent its falling out, or which will cure the condition of baldness of the scalp.

PAR. 23. Lea's Hair Tonic, by its application to the scalp and hair of any person does not cause and it has not caused stimulation of the hair pigment forming cells of the user of the preparation so as to cause natural pigmentation or color to be distributed to the user's hair. The color produced by the application of Lea's Hair Tonic, to white cotton or cotton gauze, which had been treated with thiosulphate, a soluble colorless sulphur compound, as above set forth, was a change produced by the action of a dyeing agent or a dye. The color caused to gray hair severed from a person's head by the application of the respondents' preparation, and the color caused to the hair or fur of albino rabbits, as above stated, in one instance, from white to a yellowish tinge and, in the other instance, progressively from white to a dark brown color, were changes from white to a color that was produced by the action of Lea's Hair Tonic as a dyeing agent or a dye. It was not a change effected by any stimulation of natural body pigment forming functions connected with the human hair, or with the fur growth of the albino rabbits.

PAR. 24. Lea's Hair Tonic is a hair dye. It is not a tonic. It has no tonic effect upon any part of the human system. It will not cause hair to grow or prevent its falling out, and the statements and representations caused to be made by the respondents to members of the public, users of proprietary preparations or other treatments for the relief of the condition known as dandruff of the scalp or for the purpose of changing the color of the hair of the user, that re-

Order

spondents' said preparation is a tonic; that it causes hair to grow and prevents hair from falling out; that it will cure dandruff; and, that it stimulates natural functions, and causes hair to have restored to it, natural color that it has lost, were each and all false representations of material facts which the respondents knew or with the use of ordinary prudence and care should have known to be false when made.

Each and all of such representations had the capacity and tendency to mislead and deceive dealers and members of the public, dealers in and users of proprietary articles or other things for the treatment of the hair and scalp, and they have misled and deceived such dealers and users of such proprietary articles into believing that those representations were true, and in reliance upon such belief, into purchasing, and they have accordingly purchased respondents' Lea's Hair Tonic, instead of the products of respondents' competitors and trade has thereby been diverted from respondents' competitors to the respondents.

CONCLUSION

The practices of the respondents under the conditions and circumstances described in the foregoing findings are and have been to the prejudice of the public and of respondents' competitors and are unfair methods of competition in commerce and constitute a violation of Section 5 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 by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and evidence taken before John W. Norwood, Esq., an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint and in opposition thereto, briefs filed herein, and oral arguments by Edward E. Reardon, Esq., counsel for the Commission, and by George E. Edelin, Esq., counsel for 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 ordered, That the respondent, Vasco Products, Inc., and the respondents William M. Lea and Kittie M. Lea, as copartners under the trade name Lea's Tonic Company or under any other trade

Order

21 F. T. C.

name, in the sale of or in offering for sale in interstate commerce any preparation for use in the treatment of the hair and scalp of members of the public which is essentially a saturated solution of lead chloride and which is composed substantially of alcohol, water, glycerin, sulphur and lead chloride, or which is composed substantially of the same ingredients as the preparation sold by the respondents heretofore under the name *Lea's Hair Tonic*, or which may hereafter be sold by them or either of them under any other name, do cease and desist from: •

(1) The use of the word "tonic" either in the name or designation of the preparation or in describing or representing the manner of its action or the effect of its use in the application to or treatment of the scalp and hair of users of the preparation;

(2) Representing in advertisements in newspapers and periodicals, in circulars enclosed in the package in which the preparation is offered for sale to users, or in testimonial recommendations received from or purporting to have been received from members of the public, users of the preparation, or by means of radio broadcasting, that any preparation, composed either of the same or substantially the same ingredients as the preparation heretofore sold by the respondents under the name *Lea's Hair Tonic*, by its application and use on the scalp or hair stimulates bodily functions so that pigmentation is produced which is distributed in the hair and imparts color to the hair, or that it causes color to be imparted to the hair of the user in any other manner than as a dye or dyeing agent;

(3) Representing that the use and application of any preparation composed as described in this order will cure the condition of the scalp of the user known as dandruff, or that it will relieve such condition other than by its use in loosening the dandruff so that the dandruff scales present are readily washed off; or, representing that any preparation of the same or substantially the same composition will cause the hair of the user to grow, or that it will prevent or cure the condition known as baldness of the scalp of the user.

It is further ordered, That the respondent, *Vasco Products, Inc.*, and the respondents *William M. Lea* and *Kittie M. Lea*, shall within 30 days after the service of this order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

Complaint

IN THE MATTER OF

PRINCE MATCHABELLI PERFUMERY, INC.

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

Docket 2498. Complaint, July 18, 1935—Order, Dec. 10, 1935

Consent order requiring respondent corporation, its agents, etc., in connection with the sale or offer for sale in interstate commerce of perfumes, powders, cosmetics and other merchandise of similar nature, to cease and desist from—

- (a) Using any sign, symbol or legend upon the containers or cartons of said merchandise indicating a particular country as the country of origin thereof, unless, in fact, said merchandise originated in such country;
- (b) Using upon such containers, etc., words "Les Perfumes du Prince Matchabelli Company, Inc. Paris", or any other word or words indicating that the commodity so vended was made in or imported from a foreign country or any country other than the country in which such commodity actually originated; or
- (c) Advertising, in writing or by broadcasts, or in any other manner, in connection with the sale or offer for sale of its merchandise, words "26 Rue Cambon, Paris", or any other word or words indicating that such merchandise was made in or imported from a foreign country or any country other than that wherein it actually originated.

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

Mr. Alden S. Bradley for the Commission.

Tibbetts, Lewis, Lazo & Rand, of New York City, 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 Prince Matchabelli Perfumery, Inc., a corporation 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 would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned was, a corporation organized and existing 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. It is and has been engaged in the manufacture, compounding and sale of perfumes and cosmetics. Its sales were and are made to customers and dealers