

Complaint

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IN THE MATTER OF

LEGAY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2377. Complaint, Apr. 25, 1935—Order, Jan. 22, 1936*

Where a corporation, engaged in the sale and distribution in commerce of a depilatory—

Represented upon the labels thereof and in folders accompanying the same and in periodical advertisements thereof, that its said product was a "harmless" and "effective hair remover" and banished facial hair shadows and removed unsightly hair without roughening skin texture, and that consistent use thereof would permanently eradicate hair;

Facts being its action was only temporary, and composition thereof was such that unless used with care it might burn the skin of the user and it would not remove hair, even temporarily, without roughening the skin texture, and noticeably so in the case of a user with a sensitive skin;

With capacity and tendency to mislead and deceive the purchasing public and induce their purchase of said product in reliance upon the truth of such false and misleading statements and representations and to divert trade unfairly to it from competitors who truthfully advertise their products, to the substantial injury of substantial competition in interstate commerce:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

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 LeGay, Inc., a corporation, hereinafter referred to as respondent has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, LeGay, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at Chicago in the State of Illinois. It is now and for more

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than one year last past has been engaged in the sale and distribution in commerce, between and among various States of the United States of America, of a depilatory under the trade name of "LeGay Hair Remover"; causing said product when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States of America other than the State of Illinois. In the course and conduct of its business respondent has been at all times herein mentioned in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of depilatories between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling its said depilatory between and among the various States of the United States, has adopted, has used and still uses a label for its product upon which label the following words appear:

LEGAY
Harmless Fragrant
Effective
HAIR REMOVER

Accompanying such label, in a pocket at the back thereof, has been and is inserted a small folder containing instructions for the use of said product, of which the following is a part:

LEGAY HAIR REMOVER

is a requisite to skin loveliness * * * *banishes facial hair shadows*, removes unsightly hair on arms, legs and under arms without roughening skin texture

EFFECTIVE—HARMLESS—FRAGRANT

LeGay is pleasant to use, without offensive odors even when applied. *Regular applications are essential to good grooming.*

And respondent in offering for sale and in selling its said product between and among the various States of the United States has caused and still causes the following and other statements of similar tenor, import and substance to appear in periodicals having a wide interstate circulation:

Consistent use of LeGay's Perfect Hair Remover will permanently eradicate hair.

If used consistently will gradually and permanently eradicate unsightly hair.

If LeGay's Perfect Hair Remover is applied twice a week for twenty-five weeks, used as directed, and results are not permanent,

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the manufacturers will supply free of charge, enough powder for further treatments.

FRAGRANT

HARMLESS

EFFECTIVE

HAIR REMOVER

* * * banishes facial hair shadows * * * pleasant to use
without offensive odors even when applied * * * Removes hair
without roughening skin texture * * *

When in truth and in fact respondent's said product will not permanently remove hair, is not harmless, nor is it an effective hair remover; it will not banish facial shadows and/or remove hair without roughening the skin texture; nor will its use permanently eradicate hair.

PAR. 3. Each and all of the false and misleading statements and representations of respondent as hereinbefore set out had and have the capacity and tendency to mislead and deceive the purchasing public into the beliefs that they are true and to induce them to purchase the said product in such beliefs; and said false and misleading statements and representations hereinbefore referred to likewise have the tendency and capacity to and do unfairly divert trade to respondent from individuals, corporations, associations, and firms who are competitors of respondent and who truthfully advertise their products. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 4. The acts and practices set forth herein are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning 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".

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 April 25, 1935, issued and served its complaint in this proceeding upon respondent, LeGay, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, to which the respondent filed no answer or other pleading, testimony and evidence, in support of the allegations of said complaint, were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner

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of the Commission theretofore duly designated by it; the respondent not appearing by and through its officers nor by counsel, and introducing no testimony and offering no evidence in defense of the allegations of the complaint; 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, testimony and evidence, brief of counsel for the Commission in support of the complaint, no brief being filed by the respondent; 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. Respondent, LeGay, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at Chicago in the State of Illinois. It is now and for more than one year last past has been engaged in the sale and distribution in commerce, between and among various States of the United States of America, of a depilatory under the trade name of "LeGay Hair Remover"; causing said product when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States of America other than the State of Illinois. In the course and conduct of its business respondent has been at all times herein mentioned in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of depilatories between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling the said depilatory between and among the various States of the United States, has adopted, has used and still uses a label for its product upon which label the following words appear:

LEGAY
Harmless Fragrant
Effective
HAIR REMOVER

Accompanying such label, in a pocket at the back thereof, has been and is inserted a small folder containing instructions for the use of said product, of which the following is a part:

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LeGAY HAIR REMOVER is a requisite to skin loveliness * * * *banishes facial hair shadows*, removes unsightly hair on arms, legs and under arms without roughening skin texture **EFFECTIVE—HARMLESS—FRAGRANT** LeGay is pleasant to use, without offensive odors even when applied. *Regular applications are essential to good grooming.*

And respondent in offering for sale and in selling its said product between and among the various States of the United States has caused and still causes the following and other statements of similar tenor, import and substance to appear in periodicals having a wide interstate circulation:

Consistent use of LeGay's Perfect Hair Remover will permanently eradicate hair.

If used consistently will gradually and permanently eradicate unsightly hair.

If LeGay's Perfect Hair Remover is applied twice a week for twenty-five weeks, used as directed, and results are not permanent, the manufacturers will supply free of charge, enough powder for further treatments.

**FRAGRANT
HARMLESS
EFFECTIVE
HAIR REMOVER**

* * * *banishes facial hair shadows* * * * *pleasant to use*
without offensive odors even when applied. * * * *Removes*
hair without roughening skin texture * * *.

When in truth and in fact respondent's said product will not permanently remove hair, is not harmless, nor is it an effective hair remover; it will not banish facial shadows or remove hair without roughening the skin texture; nor will its use permanently eradicate hair. The depilatory manufactured, sold, and distributed in interstate commerce by respondent is composed of starch, 52%; calcium carbonate, 35%; strontium sulphide, 11.4%; perfume, .6%; and buffer, .1%. The strontium sulphide is the active ingredient therein, it being one of the alkaline sulphides. The said active ingredient in respondent's depilatory, strontium sulphide, has the power of dissolving horn-like substances such as hair, and as the human hair has exactly the same structure as the outer skin, the said respondent's depilatory, unless used with great care and caution, may burn the skin of the person so using it. While the use of respondent's depilatory will temporarily remove hair from human bodies, it will not do so permanently, and the hair so removed will soon be followed by another growth of hair. The said depilatory of respondent will not remove hair even temporarily without roughening the skin texture, and in the event the skin of the person so using said depilatory

is sensitive, the use of respondent's depilatory would produce such a roughening of the skin that it would be obvious.

PAR. 3. Each and all of the false and misleading statements and representations of respondent as hereinbefore set out had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and to induce them to purchase the said product in such belief; and said false and misleading statements and representations hereinbefore referred to likewise have the tendency and capacity to and do unfairly divert trade to respondent from individuals, corporations, associations and firms who are competitors of respondent and who truthfully advertise their products. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

CONCLUSION

The acts and practices set forth herein are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning 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, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, brief of counsel for the Commission, 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, LeGay, Inc., a corporation, its agents, servants, and employees, in the advertising, sale and distribution in interstate commerce of its product, to wit, a depilatory known and designated by respondent as "LeGay Hair Remover", cease and desist:

From advertising or representing by labels, circulars, folders, newspapers, magazines, or other publications, by radio broadcasts, or by any other manner, method or means:

(a) That its said depilatory, known and designated as "LeGay Hair Remover", permanently removes hair from the human body.

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- (b) That said "LeGay Hair Remover" is harmless.
- (c) That said "LeGay Hair Remover" is an effective hair remover.
- (d) That said "LeGay Hair Remover" will banish facial shadows, or remove hair without roughening the skin.

And it is hereby further ordered, That the said respondent, LeGay, Inc., a corporation, shall within 60 days after the service upon it of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which it shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

DAVID LEVINE, LEWIS LEVINE AND BENJAMIN LEVINE,
TRADING AS COLOMBO EXTRACT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2349. Complaint, Mar. 29, 1935—Decision, Jan. 23, 1936*

Where a firm, engaged in the manufacture and sale of flavoring extracts—

- (a) Represented in and by advertisements, labels, stationery, and in other ways, that they imported and exported the extracts made and sold by them, and that said products were imported into the United States from foreign countries, facts being said various statements were false and said products were made in New York City of ingredients purchased by them in said city, and in various other cities of the United States;
- (b) Set forth on the labels on the bottles containing their said extracts the Italian words "Soli rappresentanti in America per la preparazione dei famosi genuini estratti", notwithstanding the fact that they were not "sole representatives in America for the preparations of such famous genuine extracts", made in Italy or any other foreign country and neither exported nor imported, as aforesaid, any of the goods dealt in by them;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that their said flavoring extracts were imported, and that they were importers thereof and thereby to induce the purchasing public, some of whom prefer imported extracts over the domestic products, and some of whom prefer to buy such products from the importers and exporters thereof, to buy its said extracts from them in such belief; and

With result of diverting trade to them from competitors, among whom there are those who make such products of domestic ingredients without representing the same as imported or themselves as importers or exporters, and those who import their extracts from various foreign countries and export the same from the United States and truthfully represent themselves as importers and exporters and their said products as imported from various foreign countries; to the substantial injury of substantial competition in interstate commerce:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Edward L. Smith and *Mr. John W. Hilldrop* for the Commission.

Mr. Milton H. Goldstricker, of New York City, 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 Fed-