

IN THE MATTER OF

LUR-EYE PRODUCTS, INC. (A NEW YORK CORPORATION), LUR-EYE PRODUCTS, INC. (A DELAWARE CORPORATION), AND W. R. ROBINSON COMPANY

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

Docket 2579. Complaint, Feb. 15, 1936¹—Decision, Mar. 24, 1936

Where two corporations engaged in the production, distribution, and sale to wholesale and retail cosmetic dealers and to others of a so-called eyelash developer—

Falsely represented in newspaper and periodical advertisements, through the mails, and otherwise and on containers and display cards of said product that it would promote the growth and change the texture of eyelashes, constituted a competent treatment for inflamed eyes or eyelids, would penetrate the follicles of the eyelashes, benefit the inner membranes, and relieve eye strain, facts being it did not have the medicinal ingredients claimed in sufficient quantities to produce such results, did not function as represented, and aforesaid representations and statements were false, misleading, and grossly exaggerated;

With result of placing in the hands of retailers and purchasers for resale an instrument enabling them to commit a fraud upon a substantial part of the purchasing public through representing said preparation as a product that would produce the results claimed and to sell substantial quantities of such preparation thereby, and with tendency and capacity to mislead and deceive a substantial number of the purchasing public into the belief that said preparation would actually develop the eyelashes and make them longer, silkier, and lovelier, and that it had the qualities and would accomplish the results hereinabove indicated, and into purchasing substantial quantities thereof in such erroneous belief, and with effect of diverting a substantial volume of trade from similarly engaged competitors who do not in any way falsely represent their products; to the substantial injury of substantial competition:

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

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

Mr. J. T. Welch for the Commission.

COMPLAINT¹

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 Lur-Eye

¹ Amended.

Products, Inc., a New York corporation; Lur-Eye Products, Inc., a Delaware corporation; and W. R. Robinson Co., an Illinois corporation; hereinafter designated as respondents, are now, and have been, 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 amended complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Lur-Eye Products, Inc., a New York corporation, is now, and has been for a period of 2 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1501 Broadway, in the city of New York and State of New York; respondent, Lur-Eye Products, Inc., a Delaware corporation, is now, and has been for a period of 2 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1501 Broadway, in the city of New York and in the State of New York; and respondent, W. R. Robinson Co., a corporation, is now, and has been for a period of 4 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Kankakee, in the State of Illinois, c/o H. L. Topping; and said respondents are now, and have been at all time mentioned herein, engaged in the business of producing, distributing, and selling to wholesale and retail dealers in cosmetics for resale and to others for consumption, certain cosmetic specialties, including Lur-Eye Lash Developer.

The connection and affiliation between the several respondents are as follows:

Respondent, W. R. Robinson Co. was organized in the year 1931 and manufactured and sold, and now manufactures and sells, to various wholesale and retail dealers, as well as members of the consuming public, in various States of the United States the product known as Lur-Eye Lash Developer. This respondent maintained a plant for the manufacture of Lur-Eye Lash Developer at Kankakee, Ill. In 1933 this respondent entered into an exclusive sales contract with one B. A. Barron, which contract was subsequently transferred to respondent, Lur-Eye Products, Inc., a New York corporation. During the entire life of the exclusive sales contract above referred to, W. R. Robinson Co. continued to exclusively manufacture Lur-

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Eye Lash Developer and delivered the said product to respondent, Lur-Eye Products, Inc., a New York corporation, in New York, N. Y. During the period of the life of this contract, respondent, Lur-Eye Products, Inc., a New York corporation, sold said Lur-Eye Lash Developer in substantial quantities to wholesale and retail dealers and other purchasers located in various States of the United States and continues to have in stock a substantial quantity of said product manufactured by the respondent, W. R. Robinson Co., and continues to sell said product to various purchasers located in the several States of the United States. The Lur-Eye Lash Developer sold by respondent, Lur-Eye Products, Inc., a New York corporation, was, and now is, packaged, labeled, and distributed in packages or other containers upon which its corporate name is prominently displayed.

PAR. 2. Said respondents, being engaged in the business of producing, distributing, and selling cosmetic specialties, including said Lur-Eye Lash Developer, causes said cosmetics, when sold to wholesale and retail dealers located in various cities in several States of the United States, to be transported from their respective principal places of business in the States of New York and Illinois, to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said cosmetic specialties, including said Lur-Eye Lash Developer, produced, distributed, and sold by the respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents are now, and have been at all times mentioned herein, engaged in substantial competition with other corporations, firms, and individuals likewise engaged in the business of producing, distributing, and selling cosmetic supplies, including eyelash developers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in the course of the operation of their respective businesses as detailed in paragraphs 1 to 3, inclusive, and for the purpose of inducing individuals, corporations, and firms to purchase said Lur-Eye Lash Developer, have from time to time caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and have printed and circulated throughout the several States to customers and prospective customers, through the United States mails and through other means, numbers of letters of solicitation, price lists, sample books, pamphlets, folders, and other advertising literature in which respondents have

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A.

**HOW TO HAVE
SOFTER
SILKIER
LONGER
LASHES**

(Picture of Girl and Lur-Eye
Lash Carton)

**MONEY
BACK IF NOT
SATISFIED**

DOES NOT SMART OR STING

B. Eye Lash Developer grows softer, silkier, and longer eye-lashes—and relieves tired, inflamed, bloodshot eyes and granulated lids. Does not smart or sting.

LUR-EYE

1. The follicle is penetrated and the hair shaft lubricated, tending to relieve the clogged condition.

2. The medication in Lur-Eye functions in connection with any inflammation or granulation present, relieving that condition.

3. The Hair itself is lubricated and stimulated by penetration of Lur-Eye to the papillae of the hair and thence to the inner shaft, which tends to keep the lash soft and silky.

4. Lur-Eye also stimulates the sebaceous gland located adjacent to each hair follicle, softens the waxy hard filling of this gland and greatly increases the healthy condition of the eyelash.

5. When applied to the eyelash, a certain amount of Lur-Eye enters the eye itself, relieving blood-shot conditions and soothing the inner membranes which tends to relieve eye strain insofar as surface applications can relieve eye strain.

The above five principal points show the way, primarily, in which Lur-Eye acts. The unnatural conditions with the eyelash being relieved and corrected, Nature is unimpeded and the result is long, silken lashes within a very short period. The continued use of Lur-Eye as directed is advisable so that the unnatural conditions of the eyelash do not return.

D. DEVELOPS LONG SILKEN EYELASHES

Results Guaranteed

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together with other advertisements containing the same or similar representations. The container in which respondents' product is marketed contains thereon the following advertising matter:

DEVELOP LONG SILKEN LASHES**LUR-EYE LASH DEVELOPER**

Develops long silken lashes

Apply "Lur-Eye" each night. It will not only develop your lashes—it will relieve tired, bloodshot or inflamed eyes, and granulated lids. Will not smart or sting.

Display cards furnished by the respondents for use by retail distributors of the product sold by the respondents under the name Lur-Eye Lash Developer have printed thereon the following:

LUR-EYE

(Picture of a girl—slot for insertion of package of Lur-Eye Lash Developer)

Develops long silken lashes. Results Guaranteed. Three Months' Treatment \$1.00

Respondents, in the course and operation of their respective businesses as hereinabove detailed, have also made use of a number of radio broadcasts for the purpose of advertising their product and inducing the purchase thereof by the general consuming public. In said radio broadcasts the respondents have caused oral representations and statements, similar to those hereinabove detailed with respect to its written advertisements, to be uttered and spoken by the announcers in connection with said radio broadcasts.

All of said statements and representations, contained in said written advertising matter or in radio announcements, purport to be descriptive of the product sold by the respondents under the name of Lur-Eye Lash Developer, and of the benefits that may be reasonably expected to be obtained from the use of said product by the user thereof.

PAR. 5. The product produced, distributed, and sold by the respondents under the name Lur-Eye Lash Developer does not contain ingredients of such a nature as to warrant the respondents in advertising: (1) That said preparation will grow eyelashes, promote the growth of eyelashes, or increase the length of eyelashes; (2) that said preparation will change the texture of eyelashes; (3) that said preparation is a competent treatment for inflamed eyes, bloodshot eyes, or granulated eyelids; (4) that said preparation will penetrate to or reach the follicles or papillae of the eyelashes; (5) that said

preparation will reach the inner shafts of eyelashes; (6) that said preparation will have any effect upon the sebaceous glands or inner membranes; (7) that said preparation will relieve eyestrain; or (8) that the results claimed will be obtained to such an extent as to justify the representation that results are guaranteed.

In truth and in fact, the cosmetic preparation marketed under the name of Lur-Eye Lash Developer does not have the medicinal qualities claimed by the respondent, as set out in paragraph 4, in such quantities as to produce the results claimed, and the representations and statements therein set out with respect to the nature of the product itself and its efficacy for relieving eye troubles therein named are false, misleading, and grossly exaggerated.

PAR. 6. A substantial portion of the purchasing public has indicated, and has a decided preference for cosmetic preparations that are accurately and truthfully advertised with respect to the results that can be reasonably expected to be obtained after a use thereof over cosmetic preparations that are not advertised accurately and truthfully with respect to the results that can be reasonably expected to be obtained after a use thereof.

PAR. 7. The false and misleading advertising and representations made by the respondents, as hereinabove set out, place in the hands of retail dealers and purchasers for resale an instrument and a means whereby said dealers may commit a fraud on a substantial portion of the consuming public by enabling such dealers to represent, offer for sale, and sell the said product known as Lur-Eye Lash Developer as a product that will produce the results claimed by the respondents in the aforementioned advertising matter after a use thereof for a reasonable period of time.

There are among the competitors of the respondents many who deal in cosmetic preparations designed for similar usage and who rightfully and truthfully represent the nature of the product, its medicinal value, and the efficacy of its use.

PAR. 8. The effect of the foregoing false and misleading advertisements and representations is to mislead a substantial number of wholesale and retail merchants, as well as a substantial portion of the consuming public in the several States, by inducing them to believe: (1) That the product marketed as Lur-Eye Lash Developer contains ingredients of a medicinal quality and of such a character and in such quantity as to effect the results claimed by the respondents from the use thereof after a reasonable time; (2) that the product will actually develop the eyelashes of the user and make them longer, silkier, and lovelier; (3) that the product will actually relieve tired, bloodshot, or inflamed eyes; and (4) that the product will relieve

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the condition created by the presence of granulated eyelids, and to purchase substantial quantities of said product known as Lur-Eye Developer in such erroneous belief.

PAR. 9. The foregoing false and misleading statements and representations are added inducements for a substantial number of wholesale and retail merchants, as well as consumer purchasers, to buy the product known as Lur-Eye Lash Developer, manufactured and offered for sale by the respondents' corporations, and have a tendency and a capacity to, and do, divert a substantial volume of trade from the competitors of the respondents engaged in similar businesses with the result that substantial quantities of said product are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 February 15, 1936, issued and served its amended complaint in this proceeding upon the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, each respondent filed an answer in which it stated that it waived hearing on the charges set forth in the complaint, that it did not wish to contest the proceeding, that it admitted all of the material allegations of the complaint to be true, and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods

of competition alleged in the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on said amended complaint and the respective answers of 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. Respondent, Lur-Eye Products, Inc., is a corporation under the laws of the State of New York with its office and principal place of business at 1501 Broadway, in the city of New York, in said State. Respondent, W. R. Robinson Co., is a corporation under the laws of the State of Illinois with its office and place of business in the city of Kankakee, in the State of Illinois. Both respondents have been, for a period of several years, engaged in the business of producing, distributing, and selling to wholesale and retail dealers in cosmetics for resale and also to others for consumption, a cosmetic specialty known as Lur-Eye Lash Developer.

PAR. 2. Both respondents, being engaged in the business of producing, distributing, and selling the cosmetic specialty known as Lur-Eye Lash Developer, for a period of several years, have caused said products, when sold by either of them to purchasers located at points in various States of the United States, to be transported from their respective places of business in the States of New York and Illinois to said purchasers in States of the United States other than the State of origin of said shipment.

There are other corporations, firms, and individuals likewise engaged in the business of producing, distributing, and selling cosmetic specialties, such as eyelash developers, in commerce, among and between the various States of the United States and in the District of Columbia, and the said respondents are now, and have been for several years, engaged in substantial competition with said competitors.

PAR. 3. In the course and operation of their respective businesses, the respondents, for the purpose of inducing the purchase of said Lur-Eye Lash Developer, have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and have also printed and circulated, through the United States mails and through other means, throughout the various States, various types of advertising literature in which they have caused their respective corporate names to be prominently and conspicuously displayed, together with various statements, purporting

to be descriptive of the product itself and of the benefits that may be reasonably expected to be obtained from the use of said product by the user thereof. The boxes or containers in which the Lash Developer is packed and the display cards used in connection with the sale of said Lash Developer also contain statements similar in nature.

The various statements, with reference to the efficacy of said preparation and the results that may be reasonably expected to be obtained upon the use thereof, made by the said respondents in all of their advertising literature, above referred to, serve as representations: (1) That it would grow eyelashes, promote the growth of eyelashes or increase the length thereof; (2) that it would change the texture of eyelashes; (3) that it is a competent treatment for inflamed eyes, bloodshot eyes, or granulated eyelids; (4) that it will penetrate to or reach the follicles or papillae of the eyelashes; (5) that it will reach the inner shafts of eyelashes; (6) that it would have a beneficial effect upon the sebaceous glands or inner membranes; or (7) that it will relieve eyestrain.

The cosmetic preparation marketed by the respondents under the name Lur-Eye Lash Developer does not have the medicinal ingredients claimed by the respondents in such quantities as to produce the results claimed, and the representations and statements made by the respondents with respect to the nature of the product itself and its efficacy for relieving eye troubles are false, misleading, and grossly exaggerated. The preparation will not grow, promote the growth of, increase the length of, or change the texture of eyelashes. It is not a competent treatment for inflamed or bloodshot eyes or for granulated eyelids. It will not penetrate to or reach the follicles or papillae of the eyelashes, or the inner shafts thereof and does not have any beneficial effect upon the sebaceous glands or inner membranes. Said preparation does not relieve eyestrain.

PAR. 4. A substantial portion of the public has indicated, and has, a preference for cosmetic preparations that are accurately and truthfully advertised with respect to the results that can be reasonably expected to be obtained after a use thereof.

The acts and representations of the respondents place in the hands of retail dealers and purchasers for resale an instrument and a means whereby said dealers may commit a fraud on a substantial portion of the purchasing public by enabling such dealers to represent said preparation as a product that will produce the results claimed and sell substantial quantities of said preparation on account thereof.

Many of the respondents' respective competitors deal in cosmetic preparations designed for similar usages and rightfully and truthfully represent the nature of their respective products, their medicinal value, and the degree of benefit that may be reasonably expected to be obtained from a use thereof.

PAR. 5. The representations and statements made by said respondents have a tendency and a capacity to mislead and deceive a substantial number of the purchasing public in the various States into the beliefs: (1) That the product marketed as Lur-Eye Lash Developer contains medicinal ingredients of such character and in such quantity as to effect the results claimed by the respondents from the use thereof after a reasonable time; (2) that the product will actually develop the eyelashes of the user and make them longer, silkier, and lovelier; (3) that the product will actually relieve tired, bloodshot, or inflamed eyes; and (4) that the product will relieve the condition created by the presence of granulated eyelids, and to purchase substantial quantities of said product known as Lur-Eye Lash Developer in such erroneous beliefs.

As a result of the erroneous and mistaken beliefs on the part of the consuming public as induced by the representations and statements of the respondents, a substantial volume of trade has been diverted from competitors of the respondents engaged in similar business who do not, in any way, falsely represent their respective products and substantial injury has been done by the respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents and constitute unfair methods of competition in 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 matter coming on to be heard by the Commission upon an amended complaint filed herein on February 15, 1936, and the respective answers submitted by the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, in which answers each respondent states that it desires to waive hearing and not to contest the proceeding, and that it ad-

mits all of the material allegations of the complaint to be true and consents that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon said respondent its findings as to the facts and its conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the amended complaint and said answers, and being fully advised in the premises;

It is now ordered, That the time within which answers may be filed by said respondents be extended to this date and the respective answers of the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, be received and filed.

It is further ordered, That the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, their respective officers, agents, servants, and employees, in connection with the distribution and sale of an eyelash developer, the same being a cosmetic specialty known as Lur-Eye Lash Developer, in interstate commerce, cease and desist from:

Advertising or representing, directly or by implication, in newspapers, magazines, radio broadcasts, circulars, display cards, or any other form of advertising literature, or in any other way, that said cosmetic preparation: (a) Will grow, promote the growth of, increase the length of, or change the texture of eyelashes; (b) that said preparation is a competent treatment for inflamed or bloodshot eyes or granulated eyelids; (c) that said preparation will penetrate to or reach the follicles or papillae or inner shafts of eyelashes; (d) that said preparation will have any beneficial effect upon the sebaceous glands or inner membranes; or (e) that said preparation will relieve eyestrain.

It is further ordered, That the proceeding, insofar as it affects Lur-Eye Products, Inc., a Delaware corporation, be and the same is hereby closed on the ground that said respondent is not engaged in commerce of any character.

It is further ordered, That respondents shall, within 60 days from the date of service upon them of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which they have complied with the order herein set forth by the Commission.

Syllabus

IN THE MATTER OF
JOHNSON MANUFACTURING COMPANY AND JOHN C.
JOHNSON

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

Docket 2514. Complaint, Aug. 14, 1935—Decision, Mar. 31, 1936

Where a corporation engaged in the sale of iron cooking utensils through solicitation by its agents or representatives, in competition with others engaged in the sale of like articles including aluminum cooking utensils, and acting at the instance of its president and principal stockholder—

(a) Included in its corporate or trade name the word "Manufacturing", notwithstanding fact it was not a manufacturer, but contracted with foundries or factories for the manufacture to its specifications of the goods which it sold; with effect of misleading and deceiving a substantial number of the purchasing public into the false belief that in buying from its representatives they were purchasing directly from the manufacturer and thereby effecting a financial saving through elimination of the profit of the middleman, and of causing a substantial diversion of trade from competitors; and

Where said corporation and said individual, in soliciting the purchase of their said products—

(b) Exhibited to customers a paper slip displaying said company's name and words "Regular price \$7.50—Advertising price \$4.50" and represented that \$7.50 was the regular price, but that special price of \$4.50 would be allowed to customer contacted, facts being that \$4.50 was the usual price at which product was and had been continually offered to the public; with intent and effect of misleading and deceiving a substantial number thereof into belief that by making purchase at figure offered they were securing a greater value than they might otherwise have secured, and were effecting a financial saving from the purported usual price of \$7.50 by purchasing then and there, and of causing a substantial diversion of trade from competitors; and

(c) Circulated through the various States pamphlets and advertising matter containing statements to effect that use of aluminum cooking utensils was deleterious to health and poisonous and furthered growth of cancer, and other statements of similar tenor, and caused their agents or representatives to circulate such statements orally, facts being that medical and scientific evidence produced was to effect that aluminum utensils did not have any such results and said statements were false; with effect of misleading and deceiving a substantial number of the purchasing public and inducing them to purchase commodities offered in reliance upon such mistaken belief, and of causing a diversion of trade from substantial numbers of competitors engaged in sale of such aluminum, or iron utensils without such misrepresentation, and with capacity and tendency so to mislead and deceive:

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.

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

Mr. Alden S. Bradley for the Commission.

Mr. Jesse R. Johnson, of Birmingham, Ala., for respondent.