

Complaint

IN THE MATTER OF

RETA TERRELL SLOAN, TRADING AS RETA TERRELL

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

Docket 2760. Complaint, Apr. 10, 1936—Decision, June 2, 1936

Where an individual engaged in the manufacture, distribution and sale of various cosmetic preparations, including "Austrian Formula," "Deep Tissue Cream," "Astringent Concentrate," and "Orange Blossom Skin Tonic"—Represented, in advertisements and in newspapers, periodicals of general circulation and in advertising literature circulated through the mails and otherwise, and upon the containers of said various preparations, that they possessed such properties and ingredients that they would serve as a food for the skin, muscles, or tissues and have a beneficial effect in feeding, toning, and firming and filling out and tightening the lines of broken tissues and would serve to restore elasticity to the skin, etc., and fill out hollows therein and eliminate dryness and remove wrinkles from and revitalize the skin, etc., and have a beneficial effect in the treatment of various conditions of the skin, muscles, or tissues, as above referred to;

Facts being none of said preparations possessed properties or contained ingredients so as to bring about such results, and said preparations do not penetrate the skin beyond the epidermis or outer layer thereof or reach the muscles and tissues underlying the same, or beneficially affect or nourish such underlying muscles or the pores or tissues or have a beneficial effect in feeding, nourishing, etc., the tissues, etc., or otherwise as above claimed;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous belief that the aforesaid various items contained medicinal ingredients of such character and in such quantity as to effect such results, and that use of said products would actually produce such various benefits claimed, and with effect of inducing the purchase of substantial quantities of said various preparations by such public acting on such mistaken belief, and of diverting thereby a substantial volume of trade from competitors who do not in any way falsely represent their respective products; to the substantial injury of substantial competition in commerce:

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

Mr. J. T. Welch 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 Reta Terrell Sloan, trading as Reta Terrell, hereinafter referred to as "re-

Complaint

22 F. T. C.

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

PARAGRAPH 1. Respondent, Reta Terrell Sloan, has her principal office and place of business at 513 Oakdale Ave., in the city of Chicago, State of Illinois, and a branch place of business at 50 East 10th St., in the city of New York, State of New York. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling, in commerce as herein set out, a line of cosmetics.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said cosmetics, when sold, to be transported from her office and place of business in the State of Illinois, or in the State of New York, to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said cosmetics, manufactured, distributed, and sold by her, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin, in commerce, among and between the various States of the United States and in the District of Columbia. In the course and operation of said business, and for the purpose of inducing the purchase of said cosmetics, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the various States, to customers and prospective customers, advertising folders and literature. In all of her advertising literature, through statements and representations therein set out, and through statements and representations of similar import and effect displayed on the containers of said cosmetics, the respondent represents that said cosmetic preparations possess properties and ingredients of such character, and in such quantity, as to serve as a food for the human skin, muscles, or tissues; that said preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues; that said preparations serve to restore elasticity to the human skin, muscles, or tissue, and fill out hollows therein; that said preparations eliminate dryness from, remove wrinkles, and revitalize

Complaint

the human skin, muscles, or tissue; and that the use of said preparations will have a beneficial effect in the treatment of the various conditions of the human skin, muscles, or tissue, above set out. Certain advertising matter used by the respondent in making said representations is herein set out as illustrative of said representations, but is not all inclusive. Such advertisements are as follows:

Austrian Formula. "The Austrian formula for the restoration of aging skin is for the removal of deep-seated and obstinate wrinkles—due to neglect, ill health or advancing years * * * Contains secret organic substances which completely revitalize the skin. * * * The skin firms up, sagging muscles push up where they belong, the eyes take on new life, clear up and the tiny lines disappear * * * It is quite possible to take off from ten to fifteen years from one's appearance within a few months * * * A complete corrective treatment * * * Without doubt the finest complete antiwrinkle cream known * * * Not only feeds and nourishes the skin but actually restores the vitality of aging cells * * * Visible results in seemingly hopeless cases." (Booklet.)

Deep Tissue Cream. "This unique preparation contains secret life-giving essence which rebuilds impoverished tissues immediately. Fills out hollows, restores the fullness of youth." (label) "This unique preparation contains the rich oil which nourishes the underlying tissues and eliminates dryness * * * Helps to eliminate dryness, rebuilds and nourishes the tissue and can be used on the most sensitive skin." (Newspaper.)

Astringent Concentrate. "Tightens the skin and restores its youthful elasticity." (label) "Makes relaxed muscles firm; contracts loose and flabby skin, reduces double chin * * * Reduces puffiness under the eyes." (Booklet.)

Orange Blossom Skin Tonic. "Tones and firms the muscles, keeps the tissues firm and healthy" (label) "The skin and muscles are now in perfect condition to absorb the greatest amount of concentrated nourishment." (Booklet.)

PAR. 4. The representations made by the respondent with respect to the nature and effect of said cosmetic products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said products do not possess properties or contain ingredients that will remove, lessen, or erase lines or wrinkles of the skin on the human face, or elsewhere on the body. Said cosmetic products do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, so as to reach the muscles and tissues, and said products do not possess properties or ingredients that beneficially affect the muscles, tissues, or layers of skin beneath the epidermis, and said muscles, tissues, and inter layers of skin are not nourished by said preparation or the ingredients thereof when externally applied.

PAR. 5. There are among respondent's competitors many who manufacture, distribute, and sell similar cosmetic products, designed, intended, and sold for the purpose of treating the same or similar conditions of the human skin, tissues, and muscles, who do not in

Findings

22 F. T. C.

any way misrepresent the quality or character of their respective products, or their effectiveness in treating said conditions of the human skin, tissues, and muscles.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her product, or the effectiveness of said product in treating the human skin, tissues, and muscles, as hereinabove set out, in her advertising in newspapers, booklets, pamphlets, labels, and other advertising literature, in the course of distributing her product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products in the treatment of the various conditions named herein. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's cosmetic products with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetic products, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's 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 April 10, 1936, issued and served its complaint in this proceeding upon the respondent, Reta Terrell Sloan, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondent filed an answer in which she stated that she waived hearing on the charges set forth in the complaint, that she did not wish to contest the proceeding, that she admitted all the material allegations of the complaint to be true, and that she consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon her, 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 proceeding regularly came on for final hearing before the Commission on said complaint and the answer of 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, Reta Terrell Sloan, trading and doing business as Reta Terrell, has her principal office and place of business at 513 Oakdale Ave., in the city of Chicago, State of Illinois. She also maintains a branch place of business at 50 E. 10th St., in the city of New York, State of New York. Respondent has been for some time, and is now, engaged in the business of manufacturing, distributing, and selling various items of cosmetic preparations, including Austrian Formula, Deep Tissue Cream, Astringent Concentrate, and Orange Blossom Skin Tonic.

When the respondent receives an order for cosmetics and ships said order, she causes said cosmetics to be transported from her place of business in the State of Illinois or in the State of New York to the various purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent has for some time maintained, and she now maintains, a substantial current of trade and commerce in said cosmetics distributed and sold by her between and among the various States of the United States and in the District of Columbia.

There are other individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin, in commerce among and between the various States of the United States and in the District of Columbia and said respondent is now, and has been at all times, engaged in substantial competition with said competitors.

Findings

22 F. T. C.

PAR. 2. In the course and operation of her business, the respondent, for the purpose of inducing the purchase of various items forming her cosmetic line of products, has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has also printed and circulated, through the United States mails and through other means, various types of advertising literature in which she has caused her trade name, Reta Terrell, to be prominently and conspicuously displayed, together with various statements purporting to be descriptive of the various items of cosmetics themselves and of the benefits that may be expected to be obtained from the use thereof by the user. The boxes or containers in which the various items of cosmetic preparations are packed also contain statements similar in nature.

The various statements, made by the respondent in her advertising literature above referred to, with reference to the efficacy of said preparations and the results that may be expected to be obtained from the use thereof, import, imply, and serve as representations to the general purchasing public that said cosmetic preparations possess properties and ingredients of such character and in such quantity that various items in said cosmetic line (1) will serve as a food for the human skin, muscles or tissues; (2) will have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues; (3) will serve to restore elasticity to the human skin, muscles, or tissues and fill out hollows therein; (4) will eliminate dryness from, remove wrinkles from, and revitalize the human skin, muscles, or tissues; and (5) will have a beneficial effect in the treatment of the various conditions of the human skin, muscles, or tissues above referred to.

PAR. 3. The various items of cosmetic preparations manufactured and marketed by the respondent under her trade name, Reta Terrell, do not have medicinal properties as claimed by the respondent of such character, or in such quantity, as to produce the results claimed. None of said cosmetic preparations possess properties or contain ingredients that will remove, lessen, or erase lines or wrinkles of the skin on the human face or elsewhere on the body. Said cosmetic preparations do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, and do not reach the muscles and tissues underlying the outer skin and do not serve as food for the skin, muscles, or tissues. None of said cosmetic preparations beneficially affect or nourish the muscles, tissues, or layers of skin beneath the epidermis. None of said cosmetic preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues and will not restore elas-

627

Order

ticity to the human skin, muscles, or tissues or fill out hollows therein. Said preparations do not remove dryness from, or revitalize the human skin, muscles, or tissues.

PAR. 4. Many of the respondent's competitors manufacture, distribute, and sell cosmetics and kindred preparations designed for similar usage and rightfully and truthfully represent the nature of their respective products, their medicinal value, and the degree of benefit that may be expected to be obtained from the use thereof.

PAR. 5. The representations and statements made by the respondent in her advertising literature, as set out in paragraph 2 hereof, have a tendency and a capacity to mislead and deceive a substantial number of the purchasing public in the various States into the mistaken and erroneous beliefs that the various items of cosmetic preparations sold and distributed by the respondent contain medicinal ingredients of such character and in such quantity as to effect the results claimed by the respondent from a use thereof and that the use of said products will actually produce the several benefits claimed. Acting on said mistaken and erroneous beliefs, above set out, which have been induced by the respondent's false and misleading representations, members of the purchasing public have purchased substantial quantities of respondent's various cosmetic preparations.

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 respondent, a substantial volume of trade has been diverted from competitors of the respondent engaged in similar businesses who do not, in any way, falsely represent their respective products and substantial injury has been done by the respondent to substantial competition, in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent are each and all to the prejudice of the public, and to the competitors of the respondent 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 a complaint filed herein on April 10, 1936, and answer to said complaint filed May 26, 1936, by Reta Terrell Sloan, trading as Reta Terrell,

Order

22 F. T. C.

respondent herein, in which answer said respondent states that she desires to waive hearing and not to contest the proceeding, and that she admits 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 conclusions based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the complaint and said answer, and being fully advised in the premises;

It is now ordered, That the time within which answer may be filed by said respondent be extended to this date and the answer of the respondent, Reta Terrell Sloan, trading as Reta Terrell, be received and filed.

It is further ordered, That the respondent, Reta Terrell Sloan, trading as Reta Terrell, her agents, representatives, servants, and employees, in connection with the distribution and sale of cosmetic preparations, 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 any of said cosmetic preparations:

(a) will serve as a food for, or nourish the human skin, muscles, or tissues;

(b) will have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out and tightening the lines of broken tissues;

(c) will serve to restore elasticity to the human skin, muscles, or tissues and fill out hollows therein;

(d) will eliminate dryness from, remove wrinkles from, and revitalize the human skin, muscles, or tissues;

(e) will penetrate the skin beyond the epidermis so as to reach the underlying muscles and tissues.

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

Complaint

IN THE MATTER OF

I. TEICH AND A. MAKOWER, TRADING AS TEE AND EMM
KNITTING MILLS

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

Docket 2521. Complaint, Aug. 16, 1935—Decision, June 15, 1936

Where a firm, engaged at wholesale in the sale and distribution of knitted goods—

Used a trade name containing the words "Knitting Mills" in soliciting the sale of and in selling their products, and featured said name in printed matter, together with the words "Manufacturers of worsted sweaters, bathing suits, and leather goods," notwithstanding fact that they did not knit or make products sold and distributed by them, nor own, operate, or control any mill or plant knitting or making said products;

With effect of deceiving and misleading retail merchants, their customers and prospective customers, among whom there is a preference on the part of some for dealing directly with the mill owner or manufacturer, in the impression that they can thus buy goods at a cheaper price and on more favorable terms, into the belief that the goods thus offered and sold were made by them in mills which they owned and operated or maintained and controlled, and of inducing such customers to purchase said goods from them because of such erroneous belief, and with the effect of diverting trade to them from competitors, including those who actually knit and manufacture their products for sale and distribution, and those who do not do so but truthfully advertise and do not represent themselves as knitters or manufacturers of such products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. Samuel Rabinowitz, 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 Federal Trade Commission, having reason to believe that I. Teich and A. Makower, a copartnership, trading as Tee and Emm Knitting Mills, hereinafter called the respondents, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest,