

Syllabus

IN THE MATTER OF
DR. S. B. HEININGER

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

Docket 2683. Complaint, Jan. 10, 1936—Decision, July 6, 1936

Where an individual engaged in the manufacture of sets of false teeth from impressions made by the laity of their own teeth and gums with material sent them by him for such purpose, and in the sale and shipment by mail to purchasers of such dental plates, in competition with numerous prosthetic dentists and with laboratories engaged in the manufacture and distribution of dentures; in advertising his said products in rural newspapers and in periodicals of interstate circulation reaching, in the main, readers in rural communities and small towns, and through other advertising media—

- (a) Represented that purchasers could make as correct impressions of their own teeth and gums as members of the dental profession, through such statements as "I have thousands of satisfied customers all over the country," etc., "I have been making dental plates that really fit for many years by mail," "My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth";
- (b) Represented that from impressions sent to him as aforesaid he could make sets of artificial teeth which would give full power of mastication and look and feel better than wearer's own teeth, through such statements as "Enable you to chew your food properly and improve your health," "My plates look and feel even better than your own teeth," "Will * * * give to the wearer full power of mastication," and "Your teeth will look as natural as your own. Nature could hardly do more"; and
- (c) Represented that his aforesaid artificial teeth fit as well and are as comfortable as those made in the usual way, through such statements as "I am pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way," "In spite of lower income you can be wearing the finest there is in dental plates," "You cannot buy better plates anywhere;"

The facts being that technical difficulties are such that it is ordinarily impossible for a dentist or dental laboratory, from an impression taken by a layman of his own teeth and gums, to make a denture that will give full power of mastication, look and feel better than the wearer's own teeth, or fit as well and be as comfortable as those made in the usual way by members of the dental profession;

With capacity and tendency to lead purchasers and prospective purchasers into accepting aforesaid representations as true, and with effect of inducing them to purchase his said dentures in such erroneous belief, to their consequent injury, and of unfairly diverting trade to said individual from competitors, among whom there are thousands of prosthetic dentists and many dental laboratories who do not misrepresent their products or that they can achieve results such as claimed by him; to the substantial injury of substantial competition in commerce:

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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. Joseph A. Simpson*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Shipman, Barrett, Henehan & Pinkowski, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Dr. S. B. Heininger, an individual, 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, Dr. S. B. Heininger, is an individual with his laboratory and principal place of business located at the city of Chicago, in the State of Illinois. He is now, and, for more than 1 year last past, has been engaged in the manufacture of dental plates and in the sale and distribution of dental plates in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of his business, respondent, Dr. S. B. Heininger, is now and has been at all times hereinafter mentioned in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent causes and has caused the following statements and representations to be published as advertisements in newspapers, and other advertising matter, circulars, form letters, price lists, and other forms of advertising mediums:

FALSE TEETH

AT LOWEST PRICES

SEE ABOUT MY TEETH BEFORE ORDERING ELSEWHERE

I have been making dental plates by mail for many years. I have thousands of satisfied customers all over the country. My methods insure satisfaction, and SAVE YOU MANY DOLLARS as well. Why pay more than my prices?

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ALMOST LIKE YOUR OWN TEETH

My dental plates are good-looking and durable. They're made with natural-looking pearly white porcelain teeth. They're guaranteed unbreakable. Fit well. Improve your appearance. Make you look years younger. Enable you to chew your food properly and improve your health. Impression material and directions given free. * * * Don't delay. Write TO-DAY for my prices and complete information.

Dr. Heininger

440 Huron Street, Dept. 39-1, Chicago, Ill.

FALSE TEETH

60 DAYS' TRIAL

Thousands of my satisfied customers all over the country know there is no need to pay big prices. I have been making dental plates that really fit for many years, by mail, and I have saved my customers thousands of dollars. Besides, I guarantee you satisfaction or they do not cost you one cent, and I take your word. Teeth made especially for you personally can be tried for sixty days.

SEND NO MONEY

My plates look and feel even better than your own teeth. They are very beautiful to look at and are constructed to give life-long service and satisfaction. You can look years younger at once. They are made with natural-looking pearly white genuine porcelain teeth. Well fitting and FREE guaranteed unbreakable. Remember, you do not send one cent with coupon—just your name and address, and we send free impression material and full detailed directions. Be sure to write today for my low prices and complete information. Don't put this off. Do it today. Just mail coupon.

I have been making artificial teeth for ten years and have been devoting my entire time to constructing teeth for people who have not the means or convenience to personally visit a dentist. My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth. I am a pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way, and besides I can save you as much as \$50.00.

It is needless for me to tell you that good teeth are a priceless possession. Without them you cannot possibly get the full enjoyment out of life. A toothless mouth or defective teeth place you under a constant feeling of embarrassment among your friends or in public. Your face and mouth become shrunken and wrinkled and you look years beyond your true age. Get a set of my guaranteed teeth and look years younger at once. You will be surprised at the improvement in your appearance. More important than all this is the fact that your health is bound to become jeopardized by the improper mastication of your food.

Those who have been so unfortunate as to lose their natural teeth face a serious problem in life. That problem is to get artificial teeth or dental plates that will restore the functions of mastication; restore the loss of facial contour, and plates that can be worn with ease and comfort, and satisfactorily perform all the functions of mastication and the natural teeth * * *.

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No two people have the same size, shape, and character of the mouth. Therefore, it takes a special kit for each individual to make an accurate impression of his or her gums. Now the first step in my system is to obtain the size and shape of the mouth. This I do by sending you a material to bite into, thereby giving me a combination impression and a bite. However, with this first impression I am unable to make a set of teeth that will fit correctly. So from it I start constructing the plate, and in the meantime, I send you another material conformed to the exact size of the mouth and held in a small metal tray to fit. This will have the original impression of your gums where you left off from the first trial, so that you will not be able to make a mistake. This second trial makes it possible for you to make an accurate impression of your gums in detail (from which I finish the plate) * * *.

I want you to be convinced that I can make you plates that fit; plates that will last a lifetime, plates that improve your appearance, and plates that can be worn with ease and comfort. Let me save you more than \$50.00 on your dental plates.

* * * will restore one's facial expression, give to the wearer full power of mastication * * * In spite of lower income you can be wearing the finest there is in dental plates.

You cannot buy better plates anywhere.

Your teeth will look as natural as your own. Nature could hardly do more.

PAR. 3. In truth and in fact, the technical difficulties of the work are such that it is impossible for a layman to take a correct impression of his own teeth and gums, or for a dentist to make from such impression teeth that will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the beliefs that:

(a) Purchasers can make correct impressions of their own teeth and gums;

(b) From such impressions respondent can make artificial teeth which will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

(c) Purchasers can secure from him artificial teeth comparable in appearance, fit, comfort, or durability with those made in the usual way by members of the dental profession; and to purchase respondent's products in such erroneous beliefs.

PAR. 4. There are among the competitors mentioned in paragraph 1 hereof, individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution of dental plates

who truthfully advertise their aforesaid products, and who do not represent:

That purchasers can make correct impressions of their own teeth and gums;

That from such impressions said competitors can make artificial teeth which will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

That purchasers can secure from them artificial teeth comparable in appearance, fit, comfort or durability with those made in the usual way by members of the dental profession.

By the representations of the respondent set forth in paragraph 2 hereof, trade is diverted by respondent from such competitors and thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the 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 10th day of January A. D., 1936, issued and served its complaint in this proceeding upon respondent, Dr. S. B. Heininger, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto, a stipulation as to the facts was entered into by and between the respondent and W. T. Kelley, chief counsel for the Commission, which said stipulation is hereby approved by the Commission, and in and by which stipulation it was agreed that the statement of facts contained therein might be taken

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as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report, its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; 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, Dr. S. B. Heininger, is an individual with his laboratory and principal place of business located at 440 West Huron St., in the city of Chicago, in the State of Illinois. He is now and for more than 1 year last past has been engaged in the manufacture of sets of false teeth and in the sale and distribution of said sets of false teeth in commerce between and among the various States of the United States.

Respondent was graduated from the Northwestern University Dental School in 1924 and was soon after licensed to practice dentistry in the State of Illinois. He practiced his profession of dentistry in a dental office which he operated at 2851 Belmont Ave., in the city of Chicago, in the State of Illinois. On or about April 1, 1926, respondent conceived the plan of having the laity take impressions of their own teeth and gums by way of two impression materials made of wax sent by him to purchasers or prospective purchasers and, upon the return to him of such impressions, making dental plates therefrom and selling and shipping the same by mail to the persons for whom such dental plates were made. To carry out this plan, respondent opened and operated a dental laboratory at 440 West Huron St., in the city of Chicago, in the State of Illinois.

On or about February 1, 1935, respondent's laboratory business became so extensive that he finally turned over his private dental practice and office to an associate. Respondent has since devoted all his time to the manufacture of dental plates, more particularly referred to among the dental profession as dentures. In his business as a manufacturer of dentures, respondent has at times employed as many as 17 persons as laboratory and office assistants, and he makes and has made as many as 40 dentures a day, all of which he causes when sold to be shipped from his said place of business in the city of Chicago, in the State of Illinois, to purchasers thereof located in a State or States of the United States other than the State of Illinois.

Respondent is now and has been at all times hereinafter mentioned in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in interstate commerce of dentures and similar articles. Besides numerous prosthetic dentists, there are among such competitors many dental laboratories likewise engaged in the manufacture and distribution of dentures, among which are: Standard Dental Laboratory, Ehrhardt & Co., and American Dental Co., all three of which are located in the city of Chicago, in the State of Illinois.

PAR. 2. In the course and conduct of his business, as above described, respondent advertises his dentures by means of advertisements published in rural newspapers and magazines such as "The Gentlewoman," "Southern Farmer," "Texas Grower," "Mother's Home Life" and "The Household Guest," and other magazines and periodicals having interstate circulation which, in the main, reach readers in rural communities and small towns, and through other forms of advertising media. Typical of such published advertisements are the following:

**FALSE TEETH
AT LOWEST PRICES**

SEE ABOUT MY TEETH BEFORE ORDERING ELSEWHERE

* * * I have thousands of satisfied customers all over the country. My methods insure satisfaction and **SAVE YOU MANY DOLLARS** as well. Why pay more than my prices?

ALMOST LIKE YOUR OWN TEETH

* * * They're guaranteed unbreakable. Fit well. Improve your appearance. Make you look years younger. Enable you to chew your food properly and improve your health. Impression material and directions given free.
* * * Don't delay. Write **TO-DAY** for my prices and complete information.

Dr. Heininger

440 Huron Street, Dept. 39-1, Chicago, Ill.

FALSE TEETH

60 DAYS' TRIAL

Thousands of my satisfied customers all over the country know there is no need to pay big prices. I have been making dental plates that really fit for many years, by mail, and I have saved my customers thousands of dollars. Besides, I guarantee you satisfaction or they do not cost you one cent and I take your word. Teeth made especially for you personally can be tried for 60 days.

SEND NO MONEY

My plates look and feel even better than your own teeth. They are very beautiful to look at and are constructed to give life-long service and satisfaction. You can look years younger at once. * * * Well fitting and **FREE** guaran-

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teed unbreakable. Remember, you do not send one cent with coupon—just your name and address, and we send free impression material and full detailed directions. * * *

In his circular letter the respondent makes the following representations:

* * * My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth. I am pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way and besides I can save you as much as \$50.00.

* * * Get a set of my guaranteed teeth and look years younger at once. You will be surprised at the improvement in your appearance. * * *

No two people have the same size, shape, and character of the mouth. Therefore, it takes a special kit for each individual to make an accurate impression of his or her gums. Now, the first step in my system is to obtain the size and shape of the mouth. This I do by sending you a material to bite into thereby giving me a combination impression and a bite. However, with this first impression I am unable to make a set of teeth that will fit correctly. So from it I start constructing the plate, and in the meantime, I send you another material conformed to the exact size of the mouth and held in a small metal tray to fit. This will have the original impression of your gums where you left off from the first trial, so that you will not be able to make a mistake. This second trial makes it possible for you to make an accurate impression of your gums in detail (from which I finish the plate) * * *.

I want you to be convinced that I can make you plates that fit, plates that will last a lifetime, plates that improve your appearance, and plates that can be worn with ease and comfort. Let me save you more than \$50.00 on your dental plates.

Respondent's price list contains the following statements:

* * * will restore one's facial expression, give to the wearer full power of mastication. * * * In spite of lower income you can be wearing the finest there is in dental plates.

You cannot buy better plates anywhere.

Your teeth will look as natural as your own. Nature could hardly do more.

When the respondent receives replies to his advertisements, he sends to each inquirer a circular letter, price list, directions for taking an impression of the said inquirer's gums, an order blank, a self-addressed envelope, and a piece of wax material. When the wax material containing the impression of the purchaser's or prospective purchaser's own gums and teeth is returned to the respondent with an order for a denture, the respondent reproduces said impression in another plastic, wax-like substance held in metal trays, which is then also sent to the customer in order to secure a more complete impression of said purchaser's or prospective purchaser's gums and teeth. This is the taking of the second impression of a purchaser's or prospective purchaser's gums and teeth, referred to in respondent's advertising literature. A contrivance is also used for determining the length of the purchaser's or prospective purchaser's teeth. When this second im-

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pression of a purchaser's or prospective purchaser's own gums and teeth is returned to the respondent together with the contrivance for the lengthening of the teeth, the respondent then makes a set of dentures, which said dentures are then shipped C. O. D. to the customer for whom they have been made.

Respondent's method of selling the dentures which he advertises, as above set forth, is to send said dentures to purchasers or prospective purchasers and to allow such purchasers or prospective purchasers a 60-day trial period, after which they may, if dissatisfied, return the dentures and receive a refund.

PAR. 3. The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to lead purchasers and prospective purchasers into the belief that:

(a) Purchasers can make as correct impressions of their own teeth and gums as members of the dental profession;

(b) From such impressions respondent can make artificial teeth which will give full power of mastication, and look and feel better than the wearer's own teeth;

(c) Purchasers can secure from him artificial teeth that fit as well and are as comfortable as those made in the usual way by members of the dental profession;

and to purchase respondent's products in such belief.

The technical difficulties of the work of a dentist specializing in the field of prosthetic dentistry and the making of dentures are such that it is ordinarily impossible for a dentist or dental laboratory to make from an impression taken by a layman of his own teeth and gums a denture that will give full power of mastication, that will look and feel better than the wearer's own teeth or that fit as well and are as comfortable as those made in the usual way by members of the dental profession.

PAR. 4. There are and have been among the competitors of respondent thousands of prosthetic dentists, and many dental laboratories making dentures upon order from dentists only, otherwise known as dental plates and false teeth, similar to those made and sold by the respondent, who do not misrepresent their products and who do not represent that said products have the merits and the capacity to achieve results such as the respondent herein claims for his dentures, as above described.

PAR. 5. Each and all of the representations of the respondent, as set forth in paragraph 3 hereof, have had and do have the tendency to mislead and deceive the purchasing public into the erroneous belief that said representations are true and have induced and do induce members of the public to purchase respondent's dentures in the erroneous belief that said representations are true, to the consequent damage

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and injury of the public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent and are unfair methods of competition in commerce in violation 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

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 issued and served its complaint against the respondent herein, Dr. S. B. Heininger, an individual with his principal place of business in the city of Chicago, in the State of Illinois, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. Thereafter the said respondent filed his answer to the charges contained in the said complaint and subsequent thereto on, to wit, the 29th day of June 1936, a stipulation as to the facts was entered into between the chief counsel of the Federal Trade Commission and the respondent herein, subject to the approval of the Federal Trade Commission, in and by which stipulation it was agreed that the statement of facts therein stipulated might be taken as the facts in this proceeding in lieu of testimony, in support of the charges stated in the said complaint or in opposition thereto; and in and by which stipulation it was agreed that the Commission might proceed upon said stipulation of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulation as to the facts) and its conclusion based thereon, and its order disposing of this proceeding without the presentation of argument or the filing of briefs; and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and its conclusion that the 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."

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Now, therefore, it is hereby ordered, That said respondent, Dr. S. B. Heininger, his officers, agents, servants, and employees in the sale and offering for sale by him in interstate commerce and in the District of Columbia of dental plates, false teeth, and similar products, forthwith cease and desist from—

Representing in newspapers and magazines and through circulars, catalogs, labels, or in any other form of printed matter or by radio broadcasting, or in any other way or manner:

(1) That purchasers or prospective purchasers of respondent's artificial teeth can make as correct impressions of their own teeth and gums as members of the dental profession;

(2) That from impressions made by purchasers or prospective purchasers of their own teeth and gums respondent can make artificial teeth that will give full power of mastication;

(3) That artificial teeth sold or offered for sale by respondent and made by him from impressions made by such purchasers and prospective purchasers of their own teeth and gums will look and feel better than the wearer's own teeth;

(4) That purchasers or prospective purchasers can secure from respondent artificial teeth that fit as well and are as comfortable as those made in the usual way by members of the dental profession; and for making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it shall have complied with this order.

IN THE MATTER OF
HOLLYWOOD MASK, INC.

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

Docket 2759. Complaint, Apr. 10, 1936—Decision, July 6, 1936

Where a corporation engaged in the sale of cosmetic preparations and in mailing or shipping its merchandise to purchasers in various other States, in substantial competition with other similar concerns—

- (a) Represented, through pamphlets, circulars, and other advertisements and through labels attached to containers, that its products possessed ingredients of such character and in such quantity as to serve as food for the skin and muscles, had a beneficial effect in filling out and tightening the lines of broken tissues, served to restore elasticity to the skin, and muscles and to fill out hollows therein, removed wrinkles and revitalized the skin, etc.; and
- (b) Set forth on labels of containers that its "Hollywood Vitamin Hand and Skin Lotion" was "rich in vitamins" and nourished impoverished skins, and that its Hollywood Creme was "Turtle Oil" and "a hormone tissue builder for tired skins," was "soothing" and "rejuvenating," and, left on over night, resulted in a soft, clear, and wrinkle-free skin;

Facts being said representations were grossly exaggerated, false, misleading, and untrue, and said products did not possess properties or contain ingredients that would remove or lessen lines or wrinkles, nourish the skin, penetrate beyond the epidermis so as to reach and beneficially affect muscles and tissues and inner layers of the skin;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true and that results claimed would follow use of said products, and with result that a substantial volume of its said products was purchased due to such representations, and trade was thereby unfairly diverted to it from those truthfully advertising their cosmetic products; to the substantial injury of substantial competition:

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

Mr. Wm. T. Chantland for the Commission.

Mr. Royal C. Johnson, of Washington, D. C., and *Mr. Milo F. Lewis*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Hollywood Mask, Inc., hereinafter referred to as "respondent," has been, and is now, using unfair methods of competition in commerce as "com-