

Syllabus

IN THE MATTER OF

G. FRED STAYTON AND THE BETTY WHITE CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2856. Complaint, June 29, 1936—Decision, Oct. 20, 1936

Where a corporation and an individual, president thereof and theretofore similarly occupied as president of two similarly engaged preceding corporations prior to their respective dissolution, engaged in distribution and sale of a line of toilet preparations, cosmetics, and beauty preparations, consisting of some twenty-nine different items and sold under the name of "Betty White" products, and likewise engaged, in connection with the conduct of such business, in conducting and advertising prize contests in various papers and magazines of general circulation throughout the several States, directed to promoting the sale of such preparations—

- (a) Represented, in their so-called contact advertising describing said contests, in the form, generally, of full-page advertisements on the back cover page or inside back cover page of papers and magazines of general circulation, in many cases, among the several States, that a person solving a problem or puzzle there presented and sending in solution, would, without being required to make any other substantial effort, be given a prize or award, and that the mere mailing of a correct solution would be sufficient to win a prize, and that a contestant in such puzzle or problem contest was not required to pay any money, and falsely purported in their advertising to disclose all of the terms and conditions that must be met by the contestant, and actually set out therein a portion only of such terms and conditions, without stating such fact, through such statements, among numerous others, as "Send answer quick, and we will tell you how the winner gets \$1250 cash for promptness," "Send no money—just mail coupon," "Remember, *send not one penny* with your answer. All you do now is to find ten *faces* if you can and mail the coupon. Send answer right away. Three prominent and reliable judges will see that the prizes are awarded honestly and promptly. * * * Over 100 grand prizes in all and many special prizes. PRIZE MONEY NOW IN BANK. * * * Just mark the faces you find and send with the coupon right away. Don't you want the opportunity to win \$2,250.00 First Grand Prize? * * * *Don't delay. Do it today!*";

The facts being that such contact advertisements did not disclose the requirement of purchases from, and sales of, their preparations as a necessity for the prize-winning, notwithstanding fact such purchases and sales constituted primary purpose and requisite of the contest, and first information of such requirement was disclosed in the rules enclosed with answers sent to all those replying to such contact advertisement, before any money was sent to the company by any one, on the letterhead of said corporation

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and over the signature of said individual as president, advising contestant about the toilet and beauty preparations, and containing a number of alluring enclosures of "Certificate of Award for 100,000 Auto Votes." printed in simulation of a money coupon, with "\$2,250.00" printed at each of the four corners, and advising recipient that among the "Just 3 Things To Do and the Money will be in Your Hands" was to "1. Send the enclosed Buick Prize Blank promptly with \$2.00 for the Big Six Bargain Assortment and you get 200,000 more Auto Votes at once," and other "come-on" statements and devices of similar tenor; and

- (b) Made use thereafter of form letters, filled in with the names of individual contestants, and intended to give the impression that they were individual letters, and that the recipient was in an unusually favorable position in the contest, and that certain credits which were given or offered at different stages of the contest gave the recipient substantial advanced standing, and that the contestant addressed was in an advanced position over many others in the contest, and encouraging such contestant to increase his efforts to win a prize, and requiring him to send a further order and awarding him a so-called diploma, and including such statements as "It makes me very happy to acknowledge receipt of your third order and to send you the enclosed Official Auto Vote Certificate showing your score of 1,020,000 Auto Votes," "You have qualified for the SPECIAL \$150.00 CASH PROMPTNESS PRIZE," "I have been watching your good work in the contest and I am promoting you to the STAR BOOSTER CLUB," and "I am sending you another order blank on which you can get 500,000 EXTRA FREE AUTO VOTES";

With the result that by reason of said plan and methods, including said advertisements, numerous form letters, system of votes, etc., the primary purpose and effect of which was to encourage contestants to sell the products in question for said company, a substantial number of the consuming public bought a substantial volume of their preparations, and thus unfairly diverted a substantial volume of trade and business to them which would otherwise have gone to competitors who did not use such unfair methods:

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.

Parrish, Guthrie, Watters & Colfleser, of Des Moines, Iowa, 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 G. Fred Stayton, and the Betty White Corporation have been and are now using unfair methods of competition in commerce as defined by 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 G. Fred Stayton is now president, general manager, treasurer, and secretary of the Betty White Corporation. He was formerly president of the Paramount Products, Inc., and of the Paramount Products Company. The Betty White Corporation is a corporation incorporated under the laws of the State of Iowa, with main office and principal place of business at 1912 Grand Avenue, Des Moines, Iowa. Respondents are now and have been for some time engaged in the business of distributing and selling in commerce, as herein set out, toilet preparations, cosmetics, and beauty preparations. The present line is known and sold under the name of "Betty White" products and consists of some twenty-nine different items.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said preparations, when sold, to be transported from their place of business in the State of Iowa to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said preparations, distributed and sold by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling cosmetics, toilet and beauty preparations, in commerce among and between the various States of the United States.

In the course and operation of said business and for the purpose of inducing purchase of said preparations, said G. Fred Stayton formerly operated personally and through and under the name of an Iowa corporation, Paramount Products Company, which was legally dissolved prior to October 18, 1935, and an Iowa corporation, Paramount Products, Inc., which was legally dissolved as of October 26, 1935. Thereafter and until the present time said Stayton and his associates have carried on said commerce personally and through and under the name of the Betty White Corporation. Throughout the continuance of said business and commerce respondents, as an essential part of their business, have conducted purported puzzle contests and, in connection therewith, have carried advertisements of such contests and of their preparations put out under various names in various papers and magazines having a general circulation throughout the several States of the United States. Continuously during the course of its business and as a part thereof, respondents have made

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false and fraudulent representations in their said advertising, especially as carried on in connection with the purported contest schemes.

Said respondents, Stayton and associates, personally and through and under the name of a newly formed corporation, respondent Betty White Corporation, continued and still continue to carry on said business under substantially the same plan and methods and with the same or similar advertising as were used by them under former designations. Respondents' present advertising is generally in the form of full page advertisement on the back cover page or inside back cover page of such papers and magazines of general circulation among the several States.

Said purported puzzle contest advertisements are generally identical or similar in form and substance. Among the false and misleading representations contained in such advertisements and the resulting correspondence are those to the effect or which carry the implication—

(1) That a first grand prize of a sedan automobile will be given to the winner and an additional \$1,250 in cash, or, if preferred, a total of \$2,250 will be given if the winner is the first person sending in the correct answer.

(2) That no money is required.

(3) That the only requirement to win a prize is prompt solution of the puzzle. In no place does the contest advertisement disclose the requirement of purchases from and sales of respondents' preparations as a necessity for the prize winning, when in fact such purchases and sales constitute the primary purpose and requisite.

(4) That the advertisement for persons to enter the contest is that of an individual and not that of a company or of a concern having merchandise for sale.

(5) That offers made are exclusively to the individual addressed and that such individual has been selected for special individual favor or has been granted exclusive advantage in the contest.

(6) That certain credits given or offered at different stages of the contest in large figures give the recipient substantial advanced standing.

(7) That letters written to contestants and prospective customers are purely personal to the one addressed.

(8) That a contestant is in an advanced position over all others in the contest and has only a little remaining to do in order to win.

(9) That the person addressed is practically sure to be a winner of the first or one of the grand prizes.

Solving the advertised purported puzzle does not qualify any contestant to win any prize. Prize winning is dependent entirely

upon purchasing and selling large quantities of respondents' products, and respondents' advertisements are deceptive, misleading and unfair in that they fail fully or at all to disclose that prizes can be won only by purchasing and selling large quantities of respondents' products and paying respondents therefor.

In addition to said advertisements, respondents carry on an extensive follow up, "come on" and inducing correspondence relating to the purported puzzle contests, the primary purpose and effect of which is to have the numerous innocent and unsuspecting contestants become sales people for respondents. To heighten the zeal of said supposed contestants and to induce them to increase their sales activity of respondents' products, respondents have a series of form letters made up to appear as though individual, which set forth increasingly the near certainty or certainty that each recipient contestant will win large money and other prizes of great value by making one or two more sizable sales. A system of votes constitutes a part of said scheme. Contestants are led to believe that they are among the few leaders in the contest with increasing emphasis as the contest supposedly nears its close. These letters are form letters and are in and of themselves frauds and misrepresentations in that all contestants are not in an identical favorable position as stated in the letters.

The whole plan is primarily not a puzzle contest at all, but the whole plan and method constitutes and is unfair competition intended to and resulting in the procurement by such deception and misrepresentations of a large sales force to sell respondents' products. Said plan and methods are unfair to all those who are engaged in selling in interstate commerce similar products who do not employ such false and misleading representations and plan and method, and tend unfairly to divert trade to respondents from such competitors who do not employ such deceptive plan and method. Respondents claimed recently to have thus induced 23,000 of such supposed contestants to become sales people of their products as a result of said unfair methods.

PAR. 4. As a result of said respondents' false and misleading representations, plans and methods as above set out, a substantial number of the consuming public have purchased a substantial volume of respondents' preparations with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products in interstate commerce who do not promote or attempt to promote the sale thereof by false and misleading representations, plans, or methods. As a result thereof substantial injury has been and is

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now being done by respondents to competitors in commerce among and between the various States of the United States.

PAR. 5. 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 the 29th day of June 1936 issued and served its complaint in this proceeding upon said respondents, G. Fred Stayton and the Betty White Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 17, 1936, the respondents filed their answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respective respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken 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 that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, G. Fred Stayton, is now the president, general manager, treasurer, and secretary of the Betty White Corporation. He was formerly president of the Paramount Products, Inc., and of the Paramount Products Company.

PAR. 2. Respondent, Betty White Corporation, is a corporation incorporated under the laws of the State of Iowa, with its main office and principal place of business at 1912 Grand Avenue, Des Moines, Iowa, and was at the time of the issuance of such complaint, and had been for some time theretofore, engaged in the business of distributing and selling in commerce, toilet preparations, cosmetics, and beauty preparations. The present line of such products is known and sold under the name of "Betty White" products and consists of some twenty-nine different items.

PAR. 3. The said respondents being engaged in business as aforesaid, caused said "Betty White" preparations when sold to be shipped and distributed from the place of business in the State of Iowa to the purchasers of such goods located at various points in States of the United States other than the State of Iowa from which shipments are made, as well as at points in the State of Iowa. At the date of the issuance of said complaint a constant current of trade in commerce was maintained in said preparations so distributed and sold between and among the various States of the United States.

PAR. 4. In the course and conduct of said business, the Betty White Corporation was, at the date of the issuance of said complaint, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling cosmetics, toilet, and beauty preparations in commerce among and between the various States of the United States.

PAR. 5. Prior to the organization of respondent Betty White Corporation, G. F. Stayton was the president of Paramount Products Company, an Iowa corporation, which was dissolved in accordance with the laws of Iowa on February 2, 1934. He was also president of Paramount Products, Inc., an Iowa corporation organized February 7, 1934, and dissolved on October 26, 1935. The Betty White Corporation was organized under the laws of the State of Iowa on August 30, 1935. All of such corporations were engaged in the distributing and selling of cosmetics, toilet, and beauty preparations among and between the various States of the United States.

Throughout the continuance of the conduct of the business of Paramount Products Company, Paramount Products, Inc., and Betty White Corporation, a part of their business was the conducting of prize contests, and in connection therewith advertisements of such contests and of Betty White preparations have been carried in various papers and magazines having a general circulation through the several States of the United States.

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PAR. 6. The advertising of Betty White Corporation is generally in the form of full page advertisements on the back cover page or inside back cover page of papers and magazines, many of which are of general circulation among the several States.

Such advertisements are generally identical or similar in form.

Such advertisements and succeeding literature contain statements to the effect that a first grand prize of \$2,250 all in cash, or if preferred a sedan automobile and an additional \$1,250 in cash, as a promptness prize, would be awarded the winner. These advertisements also contain the following language:

"Send answer quick and we will tell you how the winner gets \$1,250 cash for promptness"; "Send your answer quick. Don't delay. There is a \$1,250 cash prize for promptness if declared first prize winner."

PAR. 7. Such advertisements contain the statement that no money is required, typical text containing or relative to such statements are the following:

"Send no money—just mail coupon," (printed in red in large heavy-faced type across the middle of the page of each advertisement)
 "Remember *send not one penny* with your answer. All you do now is to find ten *faces* if you can and mail the coupon. Send answer right away. Three prominent and reliable judges will see that the prizes are awarded honestly and promptly. Thousands of dollars in special cash awards. Over 100 grand prizes in all and many special prizes."

* * * * *

"PRIZE MONEY NOW IN BANK

\$1,250.00

Cash

Send answer quick and we
 will tell you how the winner
 gets \$1,250.00 cash

FOR

PROMPTNESS

The money to pay every prize is on deposit in the *big, strong Des Moines Bank*. You take no risk, if you are declared first prize winner. Hurry! Just mark the faces you find and send with the coupon right away. Don't you want the opportunity to win \$2,250.00 First Grand Prize? Someone wins on our plan—maybe you. Mail your answer quick. *Don't delay. Do it today.*"

(Underscored words printed in black-faced type);

"Remember, *send not one penny* with your answer. You risk no money, and it costs only a postage stamp to send your answer, according to our plan, getting the opportunity to win \$2,250.00 all cash, if prompt."

Some of these so-called contact advertisements are signed "G. F. Stayton, President" and others, "Betty White Corporation."

PAR. 8. The contact advertisement does not disclose the requirement of purchases from, and sales of, respondents' preparations as a necessity for the prize winning, when in fact such purchases and sales constitute the primary purpose and requisite of such contest. The first information of requirement of purchases from, and sales of, respondents' preparations is disclosed in the rules enclosed with the answers which are sent to all persons that answer the contact advertisement, before any money is sent to the company by any such person.

The form two page answer to those who send in one of the purported puzzle solutions is on the letterhead of the "Betty White Corporation—Fine Toilet and Beauty Preparations", and is signed by "G. F. Stayton, President". Said letter for the first time advises the contestant about the toilet and beauty preparations, and contains a number of alluring enclosures including "Certificate of Award for 100,000 Auto Votes", printed in simulation of a money coupon, with "\$2,250.00", printed at each of the four corners of the face thereof. Printed across the middle of this certificate are the words "Redeemed for \$1250 Cash". The letter, following congratulatory and enticing language as to the writer's "splendid start toward success", with such award of 100,000 votes, contains the following language:

I know you are anxious to see right way what to do to get the \$2,250.00 *all in cash*, or if you prefer, the beautiful "BUICK 8 SEDAN" delivered right to your door *by your nearest Buick dealer* with \$1,250.00 in cash for being prompt.

Just 3 Things To do and the Money will Be in Your Hands.

1. Send the enclosed Buick Prize Blank promptly with \$2.00 for the Big Six Bargain Assortment and you get 200,000 more Auto Votes at once.

2. Get the most Auto Votes according to the rules enclosed and you will be declared first prize winner.

3. Accept our CERTIFIED CHECK for \$2,250.00.

* * * * *

Remember, I am not asking you to send the full regular price of \$3.30,—just send \$2.00, the SPECIAL INTRODUCTORY price (You save \$1.30)—but send it AT ONCE so you will be entered for the \$1,250.00 promptness prize, otherwise you might win the Buick Sedan and not get the \$1,250.00 promptness prize.

Now you see how Simple and Easy it is. Only one thing to do now—just rush your Buick Prize Blank by return mail. Nothing hard to do,—no risk to you whatever. Just as soon as your Buick Prize Blank and \$2.00 arrives, if prompt you will be immediately entered for the \$1,250.00 *in cash for promptness*. WON'T THAT BE WONDERFUL? I'll also send you 200,000 more Auto Votes to add to the enclosed 100,000 making you a GRAND TOTAL of 300,000 Auto Votes. This will triple your score—get them quick.

* * * * *

Be sure to show on the Buick Prize Blank whether, if first prize winner, you want the Buick and \$1,250.00 Cash or \$2,250.00 all cash.

PAR. 9. Thereafter, form letters are used in the contest and are filled in with the names of individual contestants to whom such let-

ters are sent in the course of the contest, all intended to give the impression that they are individual letters, and that the recipient is in an unusually favorable position in the contest, and that certain credits which are given or offered at different stages of the contest in large figures give the recipient substantial advanced standing. The exact value of such credits and the manner in which they are computed is shown in the rules of the contest, printed on the back of the "Certificate of Award" above mentioned.

PAR. 10. Form letters are also written to contestants when they had sent in their third orders (approximately 17% of original entrants) stating that the contestant addressed is in an advanced position over many others in the contest, and encouraging such contestant to increase his efforts to win a prize. There were approximately 22,000 entrants in the last contest. These form letters which were sent to all who have sent in three small orders for respondents' toilet articles were thus sent to over 3,700 persons in the last contest. They contain the following language:

It makes me very happy to acknowledge receipt of your third order and to send you the enclosed official Auto Vote Certificate showing your score of 1,020,000 Auto Votes.

You have qualified for the SPECIAL \$150.00 CASH PROMPTNESS PRIZE and if First Prize Winner you will receive a total of More than \$2,250.00.

I have been watching your good work in the contest and I am promoting you to the STAR BOOSTER CLUB. We are happy indeed to send you the enclosed DIPLOMA OF RECOGNITION AND ADVANCEMENT. This shows that YOU HAVE PASSED MANY CONTESTANTS And now I want to see you forge ahead to victory.

I am sending you another order blank on which you can get 500,000 EXTRA FREE AUTO VOTES. This is the FINAL FREE AUTO VOTE OFFER and I want you to send your order right away. Be sure to keep your 20% commission.

The diploma referred to which was enclosed is printed in simulation of an official document with ornate etched border and etching for seal and is in the following language:

Office of the President

By These Presents be it known that:

Is Hereby Awarded

This

DIPLOMA

of

RECOGNITION AND ADVANCEMENT

In Appreciation of the Representation Given Betty White Beauty Preparations By the above Named AUTO CLUB MEMBER and For the

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Further Reason That Said Member's Auto Vote Score is In Excess of One Million Auto Votes, This Diploma of Recognition and Advancement is awarded and said Member is Hereby Advanced to Membership in the STAR BOOSTER CLUB.

The Signature Of The President Of the Betty White Corporation is Authorized On this Membership this ----- Day of ----- at the Office of The Company in Des Moines, Iowa.

Star
Booster
Club

G. F. STAYTON, *President.*

Betty White Corporation, 1912 Grand Ave.,
Des Moines, Iowa.

PAR. 11. Solving the advertised puzzle does not of itself qualify and/or entitle any contestant to win any prize. Prize winning is dependent entirely upon purchasing and selling respondents' products.

The business carried on by the Betty White Corporation was conducted on the same general plan as that used by Paramount Products, Inc.

In addition to said advertisements, respondents carry on an extensive system of sending follow-up letters and literature relating to the prize contest (as indicated by extracts above set out) the primary purpose and effect of which is to encourage contestants to sell toilet preparations, cosmetic and beauty preparations for the Betty White Corporation.

Form letters used numbered up to #30, and a system of votes in very large numbers, were used as a part of this plan devised to sell Betty White products, which was similar to that previously employed by respondent Stayton to sell similar products under different names. Respondents' business conducted in the manner above described has been and is in competition with all others who are engaged in selling similar products in interstate commerce.

PAR. 12. As a result of respondents' plan and methods, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations, and so unfairly diverted a substantial volume of trade and business to respondents, which would otherwise have gone to competitors who have not used such unfair methods.

PAR. 13. Respondents state the Betty White Corporation, of which G. F. Stayton is president, completed on July 31, 1936, the contest which was being conducted at the date of the issuance of the complaint and since that time has been engaged in no business except the awarding of the prizes for such contest and other work necessary and incidental to the winding up of such contest and of its corporate affairs.

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The respondent, Betty White Corporation, has stated that it will not conduct or in any manner engage in any business of the kind or nature heretofore conducted by it, or any other business except its own liquidation, and will as speedily as possible wind up its affairs and effect its final dissolution in accordance with the laws of the State of Iowa.

The respondent, G. Fred Stayton, has stated that he will not engage in or conduct any business of the kind or nature described in the complaint and that he has not, since July 31, 1936, engaged in any such business except in the course of his work as president of the Betty White Corporation, in the winding up of the business affairs of said company and as necessarily incident to the awarding of the prizes won in the contest which ended July 31, 1936.

CONCLUSION

The aforesaid acts and practices of the respondents, G. Fred Stayton and the Betty White Corporation, are to the prejudice of the public and of respondents' competitors, 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the agreed stipulation of facts entered into between the respondents herein, G. Fred Stayton and Betty White Corporation, and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, G. Fred Stayton and Betty White Corporation and its officers, and their respective representatives, agents, and employees, either directly or indirectly, personally or through any corporate or other device, in connection with the advertising, offering for sale, sale, and distribution of their toilet

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preparations, or other products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that a person solving a problem or puzzle presented in an advertisement and sending said solution to respondents will, without being required to make any other substantial effort, be given a prize, an award or reward, when such is not the fact.

2. Representing that the mere mailing of a correct solution of a problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first, or any other, prize in said contest.

3. Representing that a contestant in any puzzle or problem contest will be required to pay no money.

4. Making use of advertising matter, in any puzzle or problem contest, purporting to disclose all of the terms and conditions that must be met by the contestant when said terms and conditions so set out are not, in fact, the only terms and conditions that must be met in order to be successful in winning a prize or an award in said contest.

5. Making use of advertising matter, in any puzzle or problem contest, in which there is set out a portion of the terms and conditions the contestant will be required to meet without stating that said terms and conditions so specified and set out are, in fact, only a portion of the requirements that must be met by a contestant.

6. Representing that a contestant in any puzzle contest has achieved a more advanced position toward success in said contest than said contestant has in fact achieved.

7. Making use of a form letter with reference to the position in said contest of the addressee therein which represents that it refers to his actual position or relative standing, when such is not the fact.

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

IN THE MATTER OF
MARTIN J. LEYDEN

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

Docket 2822. Complaint, May 27, 1936—Decision, Oct. 21, 1936

Where an individual, engaged in the manufacture, distribution, and sale of a hair preparation, in advertising same in newspapers of general circulation throughout the United States, and in advertising folders and literature circulated throughout the several States—

- (a) Falsely represented that said Leyden's Hair Tonic would remove dandruff completely, stop itching scalp, stop the hair from falling out, and bring the scalp to a healthy condition, start the hair to growing, and bring new life thereto;
- (b) Falsely represented that it would "bring gray and faded hair back to its natural color through the nourishment it imparts to the roots," etc., fact being it would not color, or restore color to, gray or faded hair except in the sense that it might dye the same; and
- (c) Falsely represented that said preparation contained no harmful ingredients, and was good for children to use as well as adults, and was positively harmless; facts being that under certain conditions it might prove harmful, and also might prove harmful when used by certain persons, either children or adults;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with the result that a number of the consuming public, as a direct consequence of such mistaken and erroneous beliefs, bought a substantial volume of said hair tonic, and trade was unfairly diverted to him from competitors engaged in the distribution and sale of hair tonics and other products designed, intended and sold for the treatment of the hair and scalp, and who truthfully advertise same and their effectiveness in use; to the substantial injury of competition in commerce:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. J. T. Welch for the Commission.

Mr. Philip S. Ehrlich, of San Francisco, Calif., 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 Martin J. Leyden, hereinafter referred to as respondent, has been and now is