

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

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, Martin J. Leyden, has his place of business at 1681½ Thomas Street, city of Seattle, State of Washington. Respondent is now, and has been for some years, engaged in the business of manufacturing, distributing, and selling, in commerce as herein set out, a certain preparation known as "Leyden's Hair Tonic".

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said hair tonic, when sold, to be transported from his place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said hair tonic so manufactured, distributed and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his 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 hair tonic or other products designed, intended, and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said hair tonic, respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States and has had printed and circulated throughout the several States, to customers and prospective customers, through the United States mails and otherwise, advertising folders and literature in which are made the following statements:

Brings the scalp to a healthy condition, removes dandruff completely, stops the hair from falling and starts it to grow.

It also brings gray and faded hair back to its natural color through the nourishment it imparts to the roots as water renews the green to grass and plants.

You will feel well repaid for your time and small investment when you find yourself with a beautiful head of natural hair.

Leyden's hair tonic is pleasant to use and very effective. It contains no harmful ingredients.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and its effectiveness in use. In all of his

Complaint

23 F. T. C.

advertising literature and through other means, respondent represents, through the statements and representations herein set out and other statements of similar import and effect that Leyden's hair tonic (1) will remove dandruff; (2) will stop falling hair; (3) will stop itching scalp; (4) will positively restore gray or faded hair back to its natural color; (5) will restore new life to hair; (6) is good for children to use as well as adults; and (7) is positively harmless.

PAR. 5. The representations made by respondent with respect to the nature and effect of his product when used are grossly exaggerated, false, misleading and untrue. In truth and in fact, the product will not impart nourishment to the hair roots and thereby bring gray or faded hair back to its natural or original color. In fact, said product will not color or restore color to gray or faded hair except in the sense that it may dye the hair. Said product will not bring the scalp to a healthy condition, or remove dandruff completely, or stop hair from falling, or start it to grow. Said product will not stop itching of the scalp and will not restore new life to hair. Said hair tonic may prove harmful under some conditions of its use or when used by certain persons either children or adults.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell hair tonics or other products designed, intended and sold for the purpose of treating the hair or scalp and who do not, in any way, misrepresent the quality or character of their respective product or its effectiveness in use.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing his product and the effectiveness of said product for treating hair and scalp conditions, as hereinabove set out, in his advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling his product was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public has purchased a substantial volume of respondent's hair tonic with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling hair tonics or other products designed, intended and sold for the purpose of treating hair and scalp and who truthfully advertise their respective products and the effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by

respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 May 27, 1936, issued and served its complaint in this proceeding upon respondent, Martin J. Leyden, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently the respondent filed his answer in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Martin J. Leyden, has his place of business at 168½ Thomas Street, in the city of Seattle, State of Washington. For some years, he has been engaged in the business of manufacturing, distributing and selling in commerce among and between the various States of the United States a certain preparation known as "Leyden's Hair Tonic". When the respondent receives orders for said hair tonic, he causes it to be transported from his place of business to purchasers thereof located at various points in other States of the United States. He has, for several years last past, maintained a constant current of trade in said hair tonic which he

Findings

23 F. T. C.

manufactures, distributes and sells, in commerce among and between the various States of the United States. The respondent has been at all times in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing and selling hair tonic or other products designed, intended and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States.

PAR. 2. In order to induce the purchase of said hair tonic, the respondent has caused various advertisements to be inserted in newspapers of general circulation throughout the United States and has also printed and circulated throughout the several States, through the United States mails and otherwise, advertising folders and literature in which certain representations are made. Some of the statements are as follows:

Brings the scalp to a healthy condition, removes dandruff completely, stops the hair from falling and starts it to grow.

It also brings gray and faded hair back to its natural color through the nourishment it imparts to the roots as water renews the green to grass and plants.

You will feel well repaid for your time and small investment when you find yourself with a beautiful head of natural hair.

Leyden's hair tonic is pleasant to use and very effective. It contains no harmful ingredients.

These statements, together with many other statements appearing in his advertising literature, purport to be descriptive of his product and its effectiveness. The respondent has represented, through the statements herein set out and through other statements of similar import and effect, that Leyden's Hair Tonic (1) will remove dandruff; (2) will stop falling hair; (3) will stop itching scalp; (4) will positively restore gray or faded hair back to its natural color; (5) will restore new life to hair; (6) is good for children to use as well as adults; and (7) is positively harmless.

PAR. 3. The representations made by the respondent with respect to the nature and effect of his product when used are grossly exaggerated, false, misleading and untrue. Leyden's Hair Tonic will not impart nourishment to the hair roots and thereby bring gray or faded hair back to its natural or original color. In fact, said product will not color or restore color to gray or faded hair except in the sense that it may dye the hair. It will not bring the scalp to a healthy condition or remove dandruff completely, or stop hair from falling. It will not start hair to grow and will not restore new life to hair. The use of said product will not stop itching of the scalp. Under some conditions of use, said hair tonic may prove harmful.

When used by certain persons, either children or adults, it may likewise prove harmful.

PAR. 4. There are among respondent's competitors many who manufacture, distribute and sell hair tonics or other products designed, intended and sold for the purpose of treating the hair or scalp and who do not, in any way, misrepresent the quality or character of their respective product or its effectiveness in use.

PAR. 5. The false and misleading statements and representations made by the respondent in designating and describing said hair tonic and its effectiveness in treating hair and scalp conditions were, and are, calculated to, and had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of such mistaken and erroneous beliefs, a number of the consuming public have purchased a substantial volume of respondent's hair tonic. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling hair tonic and other products designed, intended and sold for the purpose of treating hair and scalp and who truthfully advertise their respective products and their effectiveness in use. Thereby, substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Martin J. Leyden, are to the prejudice of the public and of respondent's 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 and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its

Order

23 F. T. C.

findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Martin J. Leyden, his representatives, agents and employees, in connection with the offering for sale, sale, and distribution of the product known as "Leyden's Hair Tonic", or any product of substantially the same composition and ingredients sold under the name "Leyden's Hair Tonic" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

- (1) That said product will remove dandruff;
- (2) That it will stop hair from falling out;
- (3) That its use will stop itching scalp;
- (4) That it will restore gray or faded hair back to its natural color;
- (5) That it will restore new life to the hair;
- (6) That it is as good for children to use as for adults; and
- (7) That it is harmless.

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

Syllabus

IN THE MATTER OF

WILLARD B. CASTERLINE, INDIVIDUALLY AND TRADING AS CASTERLINE BROTHERS

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

Docket 2568. Complaint, Oct. 4, 1935—Decision, Oct. 22, 1936

Where an individual, engaged in purchase of candy and chewing gum in bulk, and in repacking and selling a substantial portion of his said merchandise, advertised in periodicals of nation-wide circulation and resold in practically all stores where such products are sold, arranged as "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering the opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, the largest class by far of purchasers and consumers of such assortments, who buy same in preference to the so-called "straight" goods when displayed side by side, by reason of the lottery or gambling feature connected with the former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy or gum due to the gambling or lottery feature of the so-called "break-and-take," "draw," or "deal" merchandise—

Sold to wholesalers and jobbers of candy and chewing gum, located generally throughout the United States, together with punchboards, push cards, and explanatory display cards for retailers' use (1) assortments in which number punched by chance from board by penny purchaser determined whether particular purchaser received one or two sticks of gum, or one or two small packages of candy, or one of the other articles of merchandise included, or the half pound box of candy secured by last punch on board; (2) assortments in which number pushed by chance from card by nickel purchaser determined whether particular purchaser received one package of chewing gum, one or two packages of candy, or one of the other articles of merchandise included, or half pound box of candy procured by last push on card; and (3) assortments of penny candies of uniform size and shape, in which chance selection of certain pieces, colored centers of which differed from those of the majority, resulted in particular purchaser making such chance selection receiving one of larger pieces included with assortment, or one of the other articles of merchandise thus included, and in which purchaser of last piece in assortment secured a half pound box of candy; so packed and assembled that such various assortments could be and were displayed and offered by the numerous retail dealer purchasers thereof, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among