

Syllabus

IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 2883. Complaint, July 28, 1936—Decision, Nov. 3, 1936

Where a corporation, engaged in the sale of a line of tonics, cosmetics, beauty and toilet preparations and lotions, commonly referred to as the "Ritz" and 'Charles of the Ritz' line, including "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence Cream Ritz," and "Eyelash Grower Ritz"—

- (a) Represented, in its booklet "Beauty in the Modern Mode," distributed in large numbers through its distributors, sales branches, and sales people, that said "Eye Lotion" and "Eye Cream," as the case might be, constituted a tonic and beautifier for the eyes, strengthening the eye nerves, etc. and keeping the eyes clear and sparkling, and that the latter nourished the delicate tissues about the eyes, banishing lines and preventing crow's feet; facts being the former was merely a lotion which could in no way influence the delicate nerves of the eye or relieve functional strain, latter did not nourish underlying tissues, and the "Eyelash Grower" did not promote growth of the lashes;
- (b) Represented that its "Scalp Food" promoted the growth of the hair, facts being it did not accomplish said purpose when the hair follicle or hair root was no longer present, and could not act as a nourishing scalp food when applied externally, except that to a certain degree it was absorbed by the skin, although it did not reach the blood stream; and
- (c) Represented that its said "Rejuvenescence Cream" was an organic compound made of substances extracted from living tissue, and that it supplied the precious youth-giving element essential to young skins, and that it was absorbed by the skin immediately, etc., and that its basic elements penetrated the derma or true skin, revived the tissues, and gave the skin new life and vitality; facts being that it was not such a compound, did not supply the skin with such elements, or act as above set forth, and said representations were false;

With the result that a substantial number of the consuming public purchased a substantial volume of said preparations, and thereby unfairly diverted a substantial volume of trade and business to it 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.

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

Mr. Wm. T. Chantland for the Commission.

Mock & Blum, of New York City, for respondent.

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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 Charles of the Ritz Distributors Corporation, hereinafter referred to as respondent, has been and now is 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, Charles of the Ritz Distributors Corporation, is a corporation duly organized and existing under the laws of the State of New York. Respondent's plant, office, and principal place of business is located at 9-11 University Place in New York City, N. Y. Respondent is now and for some time has been engaged in the business of manufacturing or compounding a line of tonics, cosmetics, beauty and toilet preparations, and lotions, commonly referred to as the "Ritz" and "Charles of the Ritz" line, and consisting of five different items, to wit: "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence Cream Ritz," and "Eyelash Grower Ritz."

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

PAR. 3. In the course and conduct of its 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 distributing and selling tonics, cosmetics, toilet and beauty preparations, and lotions, in commerce among and between the various States of the United States.

Continuously in and during the course and operation of its said business and as a part thereof, respondent has made false, fraudulent, misleading, and deceptive claims as to its said products.

Respondent issues and ships to and distributes to the public generally throughout various States of the United States through its distributors, sales branches, and sales people, large numbers of a

booklet entitled "Beauty in the Modern Mode." The said booklet contains among others, the following false, fraudulent, misleading, and deceptive representations and claims as to respondent's products:

1. Eye Lotion Ritz, a tonic as well as a beautifier for the eyes; strengthens the eye nerves, relieves eye strain, and keeps the eyes clear and sparkling.

2. Scalp Food Ritz, promotes the growth of the hair.

3. Eye Cream Ritz, nourishes the delicate tissues about the eyes; banishes lines and prevents crow's feet.

4. Rejuvenescence Cream Ritz, is an organic compound made of substances extracted from living tissue. It supplies the skin with the precious youth giving element essential to young skins. It is absorbed by the skin immediately, leaving no greasy film on the surface. Its basic elements penetrate to the derma or true skin, and revivify the tissues, giving the skin new life and vitality. Rejuvenescence Cream gives the skin an immediate bloom which eliminates the necessity for make-up foundation.

5. Eyelash Grower Ritz, promotes the growth of the lashes * * * Makes the lashes long, silken and luxurious.

Said representations and claims are untrue in that said "Eye Lotion Ritz" does not strengthen the nerves, relieve eye strain, but is merely an eye wash which can in no way influence the delicate nerves of the eye; said "Scalp Food Ritz" does not promote the growth of hair, and cannot act as a scalp food when applied externally; said "Eye Cream Ritz" does not nourish the tissues, banish lines and prevent crow's feet, in that it consists chiefly of petrolatum or vaseline which has no nourishing or wrinkle preventive quality; said "Rejuvenescence Cream Ritz" does not supply the skin with any youth giving element, nor does it penetrate the skin or revivify the tissues or give to the skin new life and vitality; and said "Eyelash Grower Ritz" contains no ingredient that makes it an eye lash grower, or which promotes the growth of the eyelashes, except some yellow mercuric oxide, which has a stimulating effect only when the follicles of the hair have not died or been destroyed.

PAR. 4. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public and cause it erroneously to believe that said representations are true, and, because of such erroneous belief, to purchase the preparations of the respondent, with the result that trade in said commerce is unfairly diverted to the respondent from said competitors who do not misrepresent their products, to the substantial injury of said competitors and to the injury of the public.

PAR. 5. 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

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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 28th day of July 1936, issued and served its complaint in this proceeding upon said respondent, Charles of the Ritz Distributors Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 18, 1936, the respondent filed its 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 respondent 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 is a corporation duly organized and existing under the laws of the State of New York. Its plant, office, and principal place of business are located at 9-11 University Place, in the city and State of New York. Respondent is now and for some time has been engaged in the business of selling in interstate commerce a line of tonics, cosmetics, beauty and toilet preparations and lotions, commonly referred to as the "Ritz" and "Charles of the Ritz" line. For some time this line consisted of five different items, to wit: "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence

Cream Ritz," and "Eyelash Grower Ritz," but for some time past respondent has not sold the "Scalp Food Ritz" nor "Eyelash Grower Ritz." Said preparations were and are being manufactured or compounded for respondent by Charles of the Ritz, Inc., a corporation of which respondent is a wholly-owned and controlled subsidiary.

PAR. 2. Respondent being engaged in business as aforesaid, causes said preparations, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said preparations, distributed and sold by it between and among the various States of the United States, except it no longer is engaged in shipping or selling "Scalp Food Ritz" and "Eyelash Grower Ritz."

PAR. 3. Respondent is now and has been, in the course and conduct of its said business, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling tonics, cosmetics, toilet and beauty preparations and lotions, in commerce among and between the various States of the United States.

PAR. 4. For several years last past in the course of its business respondent has issued and shipped to and distributed to the public generally throughout various States of the United States through its distributors, sales branches, and sales people, large numbers of a booklet entitled "Beauty in the Modern Mode." The said booklet contained among others, the following representations and claims as to respondent's products:

1. Eye Lotion Ritz, a tonic as well as a beautifier for the eyes; strengthens the eye nerves, relieves eye strain, and keeps the eyes clear and sparkling.
2. Scalp Food Ritz, promotes the growth of the hair.
3. Eye Cream Ritz, nourishes the delicate tissues about the eyes; banishes lines and prevents crow's feet.
4. Rejuvenescence Cream Ritz, is an organic compound made of substances extracted from living tissue. It supplies the skin with the precious youth-giving element essential to young skins. It is absorbed by the skin immediately, leaving no greasy film on the surface. Its basic elements penetrate the derma or true skin, and revivify the tissues, giving the skin new life and vitality. Rejuvenescence Cream gives the skin an immediate bloom which eliminates the necessity for make-up foundation.

The truth and fact is that said "Eye Lotion Ritz" does not strengthen the nerves of the eye, nor relieve eye strain due to any functional defect of the eye, but is merely an eye lotion which can in no way influence the delicate nerves of the eye or relieve functional eye strain; that said "Scalp Food Ritz" will not promote the growth of hair

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when the hair follicle or hair root is no longer present and can not act as a nourishing scalp food when applied externally, except that to a certain degree it is absorbed by the skin, although it does not reach the blood stream; that said "Eye Cream Ritz" does not nourish the underlying tissues; that said "Rejuvenescence Cream Ritz" is not an organic compound made of substance extracted from living tissue, and does not supply the skin with youth-giving elements, nor do its basic elements penetrate the derma or true skin or revivify the tissues or give the skin new life and vitality; and "Eyelash Grower Ritz" does not promote the growth of the lashes.

PAR. 5. As a result of respondent's said false and misleading representations a substantial number of the consuming public has purchased a substantial volume of respondent's preparations and so unfairly diverted a substantial volume of trade and business to respondent which would otherwise have gone to competitors who have not used such unfair methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Charles of the Ritz Distributors Corporation, are to the prejudice of the public and of respondent's competitors' and constitute unfair methods of a 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 respondent, and the agreed stipulation of facts entered into between the respondent herein, Charles of the Ritz Distributors Corporation, and W. T. Kelley, Chief 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 respondent 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 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, Charles of the Ritz Distributors Corporation, its officers, representatives, agents and employees,

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either personally or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of its toilet or beauty preparations, or other products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly representing:

1. That "Eye Lotion Ritz" strengthens the eye nerves or relieves any eye strain due to any functional defect, or in any way influences the nerves of the eye.

2. That "Scalp Food Ritz" promotes the growth of hair, or acts as a nourishing scalp food.

3. That "Eye Cream Ritz" nourishes the delicate underlying tissues about the eyes, so as to prevent crow's feet or banish face lines.

4. That "Rejuvenescence Cream Ritz" is a compound made of substances extracted from living tissues, or that it supplies the skin with the precious youth-giving element essential to young skin, or that its basic elements penetrate the derma or true skin and so revivifies the tissues and gives the skin new life and vitality.

5. That "Eyelash Grower Ritz" promotes the growth of the lashes.

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.

IN THE MATTER OF
G. LINDHOLM COMPANY, INC.

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

Docket 2809. Complaint, May 18, 1936—Decision, Nov. 4, 1936

Where a corporation, engaged in sale and distribution to dealers, users, and consumers of a comb product for the treatment of the hair and scalp, designated, branded, and advertised by it as "Evans Dermectro Electric Comb"; in soliciting sale of its said product in radio broadcasts, advertisements, and advertising matter in newspapers and periodicals having interstate circulation—

- (a) Represented that said product constituted an "Amazing Invention", use of which would check dandruff and falling hair in a few days, impart new life to dry, dull hair and cause it to become wonderfully lustrous, thick and wavy, and use of which would arrest growing baldness, or tend to restore gray hair to its original color, and that new hair had started to grow in cases of premature baldness, as though a miracle, according to many users, by reason of the asserted scientific action of the electric current, as explained by European doctors, etc.; and
 - (b) Represented that "A thousand-dollar guarantee goes with every comb," and that "If after seven days' usage you are not satisfied, just return the comb and your money will be cheerfully refunded," and included in its magazine advertisement a coupon or blank, to be filled out by the prospective purchaser, bearing the legend "\$1,000 GUARANTEE COUPON," and assurance similar to that hereinabove set forth, and to the effect that purchase price, in event of dissatisfaction, would be returned "without question or quibble";
- The facts being said representations, statements, and assertions were false, misleading, and deceptive, in that use of product would not check dandruff and falling hair, etc., as above set forth, or cause it to become wonderfully lustrous, etc., or arrest growing baldness, or tend to restore gray hair to its original color, and product did not possess therapeutic value and properties claimed for it, and as respects alleged guarantee said sum had not actually been posted or deposited as collateral security with any individual or concern as depository, so as to make it properly available to any purchaser as good and sufficient security in the event that such alleged guarantee was breached by it, and guarantee was vague, misleading, and deceptive, in that it did not actually go with every comb;

With capacity and tendency to mislead and deceive the purchasing public into buying its said product under the erroneous belief that such statements and representations were true, and that use thereof would accomplish results claimed for it therein, and with result that trade was unfairly diverted to it from its competitors who truthfully represent their respective products and the benefits to be obtained from the use thereof; to the substantial injury of competition in commerce: