

IN THE MATTER OF
ERNA SAFFAN, INC., AND ROY M. KIRTLAND

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

Docket 2885. Complaint July 29, 1936—Decision Nov. 11, 1936

Where a corporation and an individual, its majority stockholder and secretary-treasurer and manager and director of its policies and practices, engaged in sale and distribution of a "hair color restorer" or dye preparation named "Youthray"; in advertising the same to the consuming public through numerous advertisements in newspapers and periodicals which circulated among the consuming public throughout the various States, and by means of advertising booklets, circulars, and other printed matter sent by mail and otherwise from their place of business to consumers and prospective consumers in many other States—

- (a) Represented that said preparation would restore hair to its original or natural color, and that it could be used as a hair color restorer without the aid of harmful dyes, and that it brought to gray hair an even, lustrous, youthful color; the facts being that it could not be thus used without the aid of harmful dyes, would not effectively restore the natural color of the hair, or bring it an even, lustrous, youthful color;
- (b) Falsely represented that said preparation was a fine germicide and antiseptic, and therefore beneficial to users thereof, and that it was not a dye, and was harmless to the most delicate scalp and hair; and
- (c) Falsely represented that they employed chemists, or owned, operated, or controlled laboratories;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with the result, as a direct consequence of such mistaken and erroneous beliefs, induced as aforesaid, that a number of the consuming public purchased a substantial volume of said preparation and treatment, and trade was unfairly diverted to them from others engaged in the sale of color restorers and similar preparations and treatments which they truthfully advertise; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, hereinafter referred to as respondents, have been and are now using unfair

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

PARAGRAPH 1. Respondent, Erna Saffan, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and the respondent, Roy M. Kirtland, an individual, is a majority stockholder in and secretary-treasurer of the respondent, Erna Saffan, Inc., and manages, controls and directs its policies and practices. The principal place of business of both of said respondents is located at 646 N. Michigan Avenue, in the city of Chicago, in the State of Illinois.

Said respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing a "hair color restorer" or dye preparation under the name "Youthray," and cause said preparation, when sold, to be transported from their said principal place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia and there is now, and has been, at all times mentioned herein, a constant current of trade in commerce in said preparation, sold and distributed by the said respondents, between and among the several States of the United States and in the District of Columbia.

In the course and conduct of said business, said respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, were and are in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the manufacture, sale, and distribution of hair color restorers and other like and similar products, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, the respondents, for the purpose of inducing the purchase of their said preparation, have made and do make statements in newspapers, magazines, periodicals, circulars, and other advertising media, circulated among prospective purchasers of said preparation, as to the remedial or restorative qualities of said preparation wherein and whereby they falsely represent and imply that the use of said preparation will (1) effectively restore the natural color of the hair; (2) act on gray hair without the aid of harmful dyes that ruin the health and beauty of hair and scalp; (3) bring to gray hair, regardless of shade, an even, lustrous, youthful color; (4) be beneficial to the head because it is a fine germicide and antiseptic.

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By the means and in the manner aforesaid, the respondents also falsely represent and imply that said preparation is not a dye; that it is harmless to the most delicate scalp and hair; and that the respondents employ chemists and own, operate and control laboratories.

Among the statements so made and circulated by the respondents are the following:

Youthray is an effective, desirable treatment for overcoming the trial of gray hair. Harmless to hair, skin and scalp, it gives your hair a look of youthful vigor, bringing a soft, lustrous, even, youthful color. Chemists say that it is actually good for your head, because it is a fine germicide and antiseptic.

* * * and what a tragic moment that is—when gray strands begin to appear. Victims feel themselves “wallflowers”—no longer sought after—no longer admissible to the close comradeship of young folks or those who *stay* young—no longer interesting to members of the opposite sex.

The single woman in business who finds herself becoming gray—the housewife who stares in horror at an increasing crop of gray reflected in her mirror—the business man who knows his age is beginning to show at his temples . . . experience that terrible “slipping away” sensation for which nothing can bring compensation.

Yet such distress—those heartaches—are so wholly unnecessary! Yes, utterly foolish, in fact, since the advent of Youthray, which is able to *banish completely gray hair worries*.

Science (and we mean true modern and authoritative science) has discovered this thoroughly satisfactory method of thwarting the menace of gray hair. It acts so swiftly and sensibly that once you have tried it, you will wonder why you ever tolerated gray hair for a moment or permitted yourself a single pang of worry about it. You will realize that when you found Youthray you made the happiest discovery of your life.

It will do everything you should expect of a preparation for gray hair—and do it without the aid of harmful, irritating poisons or dyes that ruin the health and beauty of hair and scalp. It will bring to your gray hair, regardless of its shade, an even, lustrous youthful color and beauty that you never dared hope to attain.

PAR. 3. The representations and implications made and circulated by the said respondents by the means and in the manner aforesaid, are misleading and deceptive for, in truth and in fact, said preparation will not effectively restore the natural color of the hair; it will not act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp; it will not bring to gray hair, regardless of shade, an even, lustrous, youthful color; it is not beneficial to the head because it is a fine germicide and antiseptic; it is a dye; it is not harmless to the most delicate scalp and hair; and the respondents do not employ chemists or own, operate or control laboratories.

PAR. 4. Each and all of the false and misleading statements and misrepresentations made by the respondents herein by means of ad-

vertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, and in offering for sale and selling the aforesaid preparation and treatment known as "Youthray," 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondents as aforesaid, a number of the consuming public purchases a substantial volume of said preparation and treatment known as "Youthray", with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of hair color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices, and representations of the respondents herein have been, and are, all to the prejudice of the public and of respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce 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 July 1936, issued and served its complaint in this proceeding upon Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondents herein filed an answer thereto, signed by Erna Saffan, president of the respondent corporation, and Roy M. Kirtland, in his individual capacity, in which answer the respondents stated that they waived hearing on the charges set forth in the complaint, that they admitted all of the material allegations of the complaint to be true and that they con-

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sented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon them its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter this proceeding regularly came on for final hearing, 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, Erna Saffan, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and the respondent, Roy M. Kirtland, an individual, is a majority stockholder in and secretary-treasurer of the respondent, Erna Saffan, Inc., and manages, controls, and directs its policies and practices. The principal place of business of both of said respondents is located at 646 N. Michigan Avenue, in the city of Chicago, in the State of Illinois.

PAR. 2. Said respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing a "hair color restorer" or dye preparation under the name "Youthray." Respondents offer for sale, solicit orders therefor, sell and advertise said "Youthray" to the consuming public through and by means of numerous advertisements published by them from time to time in magazines, newspapers, and other periodicals circulating among the consuming public throughout the various States of the United States; and also through and by means of advertising booklets, circulars, and other printed matter, which respondents cause to be sent by mail and otherwise from their place of business in Chicago, Ill., through and into many other States of the United States to consumers and prospective consumers of said "Youthray." As a result of such advertising, solicitation, and offering for sale of said "Youthray," respondents receive from time to time from consumers and other members of the public, numerous purchase orders for said "Youthray," which purchase orders, together with remittances of the purchase price of said product, are sent by mail and otherwise, pursuant to instructions in said advertising matter, from the respective purchasers in the several States of the United States to respondents at their place of business in Chicago, Ill. Upon receipt of said purchase orders, respondents, pursuant thereto, fill said orders and cause said product "Youthray" to be shipped and delivered by them from

their place of business in Chicago, Ill., through and into other States of the United States to the respective purchasers thereof, thus accomplishing and conducting the interstate sale and distribution of said product to the consuming public. In so carrying on their business respondents are and throughout the course and conduct thereof have been engaged in interstate commerce and in direct, active competition with many other individuals, partnerships, and corporation similarly engaged in the sale and distribution, in commerce between and among the various States of the United States, of competing products and of products used for similar purposes.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents, for the purpose of inducing the purchase of their said preparation, have made misleading statements in newspapers, magazines, periodicals, circulars, and other advertising media, circulated among prospective purchasers of said preparation, as to the remedial or restorative qualities of said preparation wherein and whereby it was represented and implied that the use of said preparation will (1) effectively restore the natural color of the hair; (2) act on gray hair without the aid of harmful dyes that ruin the health and beauty of hair and scalp; (3) bring to gray hair, regardless of shade, an even, lustrous, youthful color; (4) be beneficial to the head because it is a fine germicide and antiseptic.

By the means and in the manner aforesaid, the respondents also falsely represented and implied that said preparation is not a dye; that it is harmless to the most delicate scalp and hair; and that the respondents employ chemists and own, operate, and control laboratories.

Among the statements so made and circulated by the respondents are the following:

Youthray is an effective, desirable treatment for overcoming the trial of gray hair. Harmless to hair, skin and scalp, it gives your hair a look of youthful vigor, bringing a soft, lustrous, even, youthful color. Chemists say that it is actually good for your head, because it is a fine germicide and antiseptic.

* * * and what a tragic moment that is—when gray strands begin to appear. Victims feel themselves “wallflowers”—no longer sought after—no longer admissible to the close comradeship of young folks or those who *stay* young—no longer interesting to members of the opposite sex.

The single woman in business who finds herself becoming gray—the housewife who stares in horror at an increasing crop of gray reflected in her mirror—the business man who knows his age is beginning to show at his temples . . . experience that terrible “slipping away” sensation for which nothing can bring compensation.

Yet such distress—those heartaches—are so wholly unnecessary! Yes, utterly foolish, in fact, since the advent of Youthray, which is able to *banish completely gray hair worries*.

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Science (and we mean true modern and authoritative science) has discovered this thoroughly satisfactory method of thwarting the menace of gray hair. It acts so swiftly and sensibly that once you have tried it, you will wonder why you ever tolerated gray hair for a moment or permitted yourself a single pang of worry about it. You will realize that when you found Youthray you made the happiest discovery of your life.

It will do everything you should expect of a preparation for gray hair—and do it without the aid of harmful, irritating poisons or dyes that ruin the health and beauty of hair and scalp. It will bring to your gray hair, regardless of its shade, an even, lustrous, youthful color and beauty that you never dared hope to attain.

The advertisements hereinabove set out are not now in use and had already been discontinued before the issuance of the complaint herein.

PAR. 4. The representations and implications made and circulated by the means and in the manner aforesaid, are misleading and deceptive. In truth and in fact, "Youthray" will not effectively restore the natural color of the hair, nor will it act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp. "Youthray" will not bring to gray hair, regardless of shade, an even, lustrous, youthful color. It is not a fine germicide and antiseptic and therefore beneficial, as represented, but is a dye and, therefore, is not harmless to the most delicate scalp and hair.

The respondents do not employ chemists or own, operate, or control laboratories.

PAR. 5. There are and have been among the competitors of respondents, in interstate commerce, for more than one year last past, manufacturers and distributors of hair color restorers and similar products, who truthfully advertise and represent the merits and therapeutic value of their products. There are also among such competitors of the respondents, and have been for more than one year last past, manufacturers and distributors of hair color restorers and similar products, who do not advertise and represent that such products have the merits and therapeutic value they have not.

PAR. 6. Each and all of the false and misleading statements and misrepresentations made by the respondents herein by means of advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, and in offering for sale and selling the aforesaid preparation and treatment known as "Youthray," 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondents as aforesaid, a number of the consuming public purchases a substan-

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tial volume of said preparation and treatment known as "Youthray," with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of hair color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The above and foregoing acts and practices of respondents herein have been and are, all to the prejudice of the public and of respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on September 25, 1936, by respondents admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its 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 time within which answer may be filed by said respondents be, and the same hereby is, extended from August 23, 1936, to this date, and that the said answer of the respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, be, and the same hereby is received and filed.

It is further ordered, That the respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, individually, jointly or separately or through or by means of any co-partnership, firm or corporation, and their respective associates, agents, servants, representatives, and employees, in connection with the offering for sale, sale and distribution of hair color restorer, designated by them as

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"Youthray," or any product of substantially the same composition and ingredients sold under the name "Youthray" or any other name, manufactured, distributed, and sold by them in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels or any other form of printed matter, or by radio broadcasting, or any other manner:

1. That said color restorer will, when used, restore hair to its original or natural color;

2. That said color restorer can be used as a hair color restorer without the aid of harmful dyes;

3. That said color restorer brings to gray hair, regardless of shade, an even, lustrous, youthful color;

4. That said color restorer is a fine germicide and antiseptic, and therefore beneficial to users thereof;

5. That said color restorer is not a dye;

6. That said color restorer is harmless to the most delicate scalp and hair;

7. That respondents own, operate and control laboratories, staffed by chemists under their employ until and unless such is the case.

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

Syllabus

IN THE MATTER OF
INTERSTATE DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2372. Complaint, Apr. 22, 1935—Decision, Nov. 13, 1936

Where a corporation, engaged as rectifier of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in selling same in competition with those engaged in manufacture by distillation of whiskies and other spirituous beverages and in sale and distribution thereof, and with other rectifiers and wholesalers, and owning no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, and furnished its wholesale customers with the means of thus representing to retailers and to ultimate purchasers that said whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it was not a distiller and did not distill said whiskies or other liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into belief that in buying said liquors they were purchasing a product bottled at a distillery by the original distiller thereof, as substantially preferred by trade and public, and with effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation from mash, wort, or wash, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Interstate Distillers, Inc., a corporation hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.