

Syllabus

IN THE MATTER OF
NEET, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2716. Complaint, Feb. 7, 1936—Decision, Jan. 19, 1937*

Where a corporation engaged in manufacture, distribution, and sale of a depilatory known as "Neet", in widely advertising its said product in newspapers and periodicals of general circulation and in display cards, advertising folders, and literature printed and circulated by it throughout the several States to customers and prospective customers—

- (a) Represented that by careful laboratory control its alkalescence had been so regulated that it never approached causticity, facts being that, while not generally caustic when applied according to its directions, to those portions of the body recommended for treatment with said product for removal of superfluous hair, there are a number of persons whose skin is more susceptible to irritation than that of others and in case of whom it might have caustic effect, as it might also, not applied as directed;
- (b) Represented that use of said product discouraged growth of hair and delayed its appearance for a material length of time, and that hair was much slower in returning and regrowing than when shaved, facts being hair regrowing after use thereof is no slower in returning, etc., than after shaving, allowance made for action of preparation in removing hair farther below surface of skin than razor, and consequent greater delay in reappearance;
- (c) Represented that shaving stimulates hair growth, and that hair returning or regrowing after use of its said product is softer and less than that returning or regrowing after shaving, facts being former is no softer or less coarse than latter, though regrowth with rounded end and less coarse feeling may result from dissolving process thereof;
- (d) Represented that its said product gave results unlike other methods of hair removal, and that it was not an ordinary hair remover, and ended enlarged pores which shaving tended to cause, and would permanently eradicate hair, facts being shaving does not cause such enlarged pores, nor does use of its said product end same, and aforesaid various representations were false; and
- (e) Falsely represented that its said product was used by surgeons to remove hair before operating;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all said representations were true, and into purchase of a substantial volume of its said product on account of such beliefs, and with result that trade was diverted to it from those engaged in manufacturing, distributing, and selling depilatories or other products designed, intended and sold for purpose of removing superfluous hair, and who truthfully advertised same and effectiveness thereof; to the 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.

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

Mr. J. T. Welch for the Commission.

Mr. Edward S. Rogers and *Mr. H. H. Ramsay*, of New York City, and *Rogers, Woodson & Rogers*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Neet, Inc., a corporation, 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, Neet, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located in the city of Chicago, State of Illinois. 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 depilatory known as "Neet."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said depilatory, when sold, to be transported from its office and principal place of business in the State of Illinois to purchasers thereof located in various points in other States of the United States and in the District of Columbia and there is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said depilatory 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 its said business, respondent is now, and has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of manufacturing, distributing and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, 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 individuals, firms, and corporations to purchase said depilatory, respondent has caused advertisements to be inserted

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in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, display cards, advertising folders, and literature, in all of which advertisements respondent has caused its corporate name to be prominently and conspicuously displayed, together with the following statements:

Its job is to remove hair and to delay its reappearance indefinitely and to relieve women of the highly stimulated growth of hair bristles, following shaving, that thousands of women are suffering today.

It gives results unlike any other method known to the scientific world in hair removal.

Not an ordinary hair remover.

The hair that regrows after using "Neet" is many times softer and less coarse than the hair that comes back after shaving and the hair itself is much slower in returning.

"Neet" ends, too, the disfigurement of enlarged pores.

By careful laboratory control, the alkalescence of "Neet" is regulated so that its pH never approaches causticity.

All of said statements, together with many similar statements appearing in respondent's advertising literature purport to be descriptive of respondent's product. In all of its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect, that (1) its product is not caustic; (2) that its product discourages growth of hair, delays its reappearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved; (3) that shaving stimulates hair growth; (4) that the hair returning or regrowing after using "Neet" is softer and less coarse than the hair returning or regrowing after shaving; (5) that its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover; (6) that its product ends enlarged pores and that shaving tends to cause enlarged pores; (7) that its product will permanently eradicate hair and (8) that many surgeons use its product to remove hair from patients before operating.

PAR. 5. The representations made by the respondent with respect to the nature and effect of its product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the product is caustic, particularly when the product is introduced into the eye; it does not discourage the growth of hair or delay its reappearance for any material length of time and the hair is not appreciably slower in returning or regrowing than it is following

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shaving or following the use of other methods of hair removal. Shaving does not stimulate hair growth and the hair that returns after using "Neet" is not softer and less coarse than the hair that regrows following shaving. The product known as "Neet" does not give results unlike other methods of hair removal but the results given are similar to those given by many other depilatories and respondent's product is an ordinary hair remover. Shaving does not cause enlarged pores and the use of respondent's product does not end enlarged pores, nor will it permanently eradicate hair. Surgeons do not use respondent's product for the purpose of removing hair from patients before operating.

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

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its product and the effectiveness of said product for removing hair, as hereinabove set out, in its advertising in newspapers, magazines, booklets, pamphlets, display cards, and other advertising literature, in offering for sale and selling its 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 substantial number of the consuming public has purchased a substantial volume of respondent's depilatory with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, and who truthfully advertise their products. As a result thereof, substantial injury has been, and is now being done, by respondent to substantial 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 February 7, 1936, issued and served its complaint in this proceeding upon respondent Neet, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by J. T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by James H. Rogers, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Rogers, Woodson & Rogers and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding in addition to the testimony theretofore taken and that the said Commission may proceed upon said statement of facts and upon the testimony and evidence taken 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, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and said stipulation as to the facts, said stipulation having been approved and accepted by the Commission, 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, Neet, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Its principal office and place of business is lo-

cated in the city of Chicago, State of Illinois. For some years the respondent has been engaged in the business of manufacturing, distributing, and selling a certain depilatory known as "Neet." When orders are received for said depilatory, respondent ships said product so purchased from its principal place of business in the State of Illinois to the respective purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent, has, at all times, maintained a constant current of trade in commerce in said depilatory manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia. There are likewise other corporations, firms, and individuals engaged in the business of manufacturing, distributing, and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, in commerce among and between the various States of the United States and in the District of Columbia. Respondent, Neet, Inc., is in substantial competition in the sale of its product "Neet" with said other corporations, firms, and individuals in the sale of their respective products.

PAR. 2. For the purpose of inducing the purchase of its depilatory, respondent has widely advertised said product in advertisements inserted in newspapers and magazines of general circulation throughout the United States. It has also printed and circulated throughout the several States, to customers and prospective customers, display cards, advertising folders, and literature. In all of the advertisements and advertising matter hereinabove mentioned, respondent has caused its corporate name to be prominently and conspicuously displayed, together with such statements as the following:

Its job is to remove hair and to delay its reappearance indefinitely and to relieve women of the highly stimulated growth of hair bristles, following shaving, that thousands of women are suffering today.

It gives results unlike any other method known to the scientific world in hair removal.

Not an ordinary hair remover.

The hair that regrows after using "Neet" is many times softer and less coarse than the hair that comes back after shaving and the hair itself is much slower in returning.

"Neet" ends, too, the disfigurement of enlarged pores.

By careful laboratory control, the alkalescence of "Neet" is regulated so that its pH never approaches causticity.

The statements above set out, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of its product. Through these statements and other similar statements of similar import and effect, the respondent represents that (1) its product is not caustic; (2) that its product discourages

growth of hair, delays its reappearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved; (3) that shaving stimulates hair growth; (4) that the hair returning or regrowing after using "Neet" is softer and less coarse than the hair returning or regrowing after shaving; (5) that its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover; (6) that its product ends enlarged pores and that shaving tends to cause enlarged pores; (7) that its product will permanently eradicate hair and (8) that many surgeons use its product to remove hair from patients before operating.

PAR. 3. In truth and in fact, the product designated as "Neet" is not generally caustic when applied according to respondent's directions to those portions of the body recommended to be treated with said product for the removal of superfluous hair. There are a number of persons whose skin is more susceptible to irritation than that of others. The product "Neet" might have a caustic effect when applied to the skin of such persons. It might, also, have a caustic effect when not applied in accordance with the respondent's directions.

The product is caustic to such sensitive portions of the body as the eyes, but is not normally applied to the eyes and is introduced into them only in cases of misapplication. In many cases, the product may produce a sufficient dermatitis to result in a redness of the skin in the area treated, but this dermatitis is not generally of such a character as to be considered a caustic burn.

"Neet" does not discourage the growth of hair and does not delay its reappearance for any material length of time. The hair regrowing after the use of said product is no slower in returning and regrowing than when the hair has been shaved, except that when the hair is removed by the use of said product, it is generally taken off farther below the plane of the surface of the skin than when the hair is removed with a razor. In shaving the hair, the stalk of the hair is generally cut off at a point in line with the plane of the skin surface. In the removal of hair by the respondent's process or any process similar thereto, the product, to some extent, goes down into the pores and dissolves the stalk of the hair below the plane of the skin surface. To the extent that the product goes below the plane of the skin surface in dissolving the hair stalk, the hair will be delayed in reappearing above the plane of the skin surface.

There is no scientific basis for the statement or representation that shaving stimulates the hair growth or causes the regrowing hair to

come in faster or coarser. In fact, the shaving of superfluous hair has no effect whatever on the texture or rate of growth of the regrowing hair.

The hair returning or regrowing after the use of "Neet" is no softer or less coarse than the hair returning or regrowing after shaving. By reason of the process by which respondent's product dissolves the hair stalk rather than chopping it off, the hair regrowing or returning after the use of said product may have a rounded end with the result that the returning or regrowing hair feels less coarse.

The use of respondent's said product does not give results unlike other methods of hair removal. On the contrary, the use of the product gives results similar to the results given by other methods of hair removal and respondent's product is an ordinary hair remover.

Shaving does not cause enlarged pores in the skin and the use of respondent's product does not end enlarged pores. In fact, the use of respondent's product will have no effect whatever on the size or character of the pores of the skin.

Respondent's product will not permanently eradicate hair and its use has no effect whatever on the roots of the hair.

Surgeons do not, in fact, use respondent's said product to remove hair from patients before operating on said patients.

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

PAR. 5. The various statements and representations made by the respondent in describing its product and the effectiveness of said product in use had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and into the purchase of a substantial volume of respondent's depilatory on account of such beliefs induced by respondent's representations contained in its various advertisements. As a result thereof, trade has been diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, and who truthfully advertise their products and the effectiveness of said products when used. As a consequence thereof, injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Neet, Inc., 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, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto and upon a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, 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, Neet, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a depilatory product now known and designated as "Neet," or of a product of substantially the same composition and ingredients sold under the name "Neet" or under any other name, in interstate commerce or in the District of Columbia do forthwith cease and desist from representing:

1. That its product is not caustic, provided that the respondent is not hereby prohibited from representing the said product is not generally caustic;

2. That the use of said product discourages the growth of hair and delays its appearance for a material length of time and that the hair is much slower in returning and regrowing than when it is shaved, provided that the respondent is not hereby prohibited from representing that the hair returns more slowly when removed by respondent's product than when removed by a razor to whatever extent said product penetrates into the pores below the plane of the surface of the skin and dissolves the hair stalk;

3. That shaving stimulates hair growth;

4. That the hair returning or regrowing after using its product is softer and less coarse than the hair returning or regrowing after

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shaving, provided that the respondent is not hereby prohibited from representing that the hair returning or regrowing after using its product feels less coarse on account of the rounded end thereof;

5. That its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover;

6. That its product ends enlarged pores or that shaving tends to cause enlarged pores;

7. That its product will permanently eradicate hair;

8. That its product is used by surgeons to remove hair before operating.

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.

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IN THE MATTER OF
RALADAM COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2406. Complaint, July 15, 1935¹—Decision, Jan. 21, 1937*

Where corporation engaged in offer and sale of weight reducing preparation "Marmola," in substantial competition with others engaged in sale and distribution of medicines, preparations, systems, methods, books of instruction, and other commodities, articles, and means, designed, intended, and used for aforesaid purpose; in promoting sale of said product, active reducing ingredient of which was desiccated thyroid, through advertisements in newspapers and periodicals of general circulation, radio broadcasts, booklets and printed matter and other means—

- (a) Represented that thyroid deficiency was a common cause or the usual cause of obesity or excess fat, and that if a person was overweight it was an indication of such deficiency, and that thyroid should be taken for reducing purposes, facts being most cases of obesity or excess fat are caused by incorrect habits of eating, and only a very small percentage of the total number of cases of obesity are endogenous obesity, in which are included cases resulting from thyroid deficiency, only one qualified by training and experience can determine with any degree of certainty whether case of obesity is result of aforesaid deficiency, and, if so, whether physiological condition of patient is such as to make advisable use of desiccated thyroid, and dosage, and patient taking such substance should be observed and examined at regular intervals by one trained and experienced in such work to determine effects of such procedure, and whether symptoms are apparent indicating possible harmful results or if treatment should be continued further;
- (b) Represented that all modern physicians use such reducing ingredient in its said preparation for treatment of obesity, and that if a prospective purchaser of said preparation were to consult a specialist in obesity he would probably prescribe said ingredient, and that such medication in treating obesity generally is supported by opinions of physicians and scientists the world over, and that physician of prospective purchaser would probably employ same medication, facts being that while, generally speaking, desiccated thyroid is indicated in treatment of obesity occasioned by thyroid deficiency, it is usually only one feature of treatment in such cases, and, while used by many physicians in treatment of such cases, it is not used in others by reason of various pathological conditions which may inhibit administration of such preparation;
- (c) Represented and indicated that its said preparation, or desiccated thyroid, active ingredient thereof, was remedy indicated in and best suited for treatment of obesity or reduction of excess fat in great multitude of such cases, and in average case, and for all persons who are overweight or who wish to reduce, and that such preparation or active ingredient thereof feeds and

¹ Amended.