

Complaint

IN THE MATTER OF

LOUIS KIPILMAN, DOING BUSINESS AS MAJESTIC
LABORATORIES

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

Docket 3080. Complaint, Mar. 17, 1937—Decision, Apr. 21, 1937

Where an individual engaged in the manufacture of a pharmaceutical preparation known as "Kipzeme Ointment," intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments, and in the sale thereof in substantial competition with others engaged in the manufacture of like and similar products and sale thereof among the various States and in the District of Columbia, including those who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and those who do not advertise or otherwise represent that such products have merit or therapeutic value which they do not have—

Represented and implied, in advertisements of said "Kipzeme Ointment," in various newspapers, periodicals, and publications and in other forms of printed matter, and by radio broadcast and in other ways, that preparation in question was a competent and adequate remedy for leg sores, running sores, aggravated cases of eczema, and other skin eruptions and kindred ailments, through such statements as "Leg sores all healed," "Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME * * *," facts being said preparation does not heal all such sores and is not a competent and adequate remedy in cases of aggravated eczema or in the case of old leg sores, running sores, and other skin conditions, and representations in question, as respects nature and effect of said product, are exaggerated, misleading, and deceptive, and preparation, in many cases, will not accomplish results claimed therefor;

With capacity to mislead and deceive purchasers and prospective purchasers into erroneous belief that such representations were true and into purchase of substantial quantities of product in question, on account of such belief induced as aforesaid, and with result that trade was unfairly diverted to him from competitors who do not similarly advertise their respective products; 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.

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 Louis

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Kipilman, an individual doing business under the trade name Majestic Laboratories, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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, Louis Kipilman, is an individual, having his principal office and place of business located at 128-04—111th Avenue, in the city of Richmond Hill, Long Island, in the State of New York. Respondent for more than one year last past has been and still is, engaged in the manufacture of a pharmaceutical preparation, known as "Kipzeme Ointment" intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments, and in offering said product for sale, and selling the same, in commerce between the State of New York and the several States of the United States and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from his place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than one year last past has been in substantial competition with other individuals and with partnerships, corporations, and firms engaged in the manufacture of like and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, the respondent, in soliciting the sale of and selling his pharmaceutical preparation known as "Kipzeme Ointment," and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than one year last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter, and by radio broadcasting and in other ways. In said ways and by said means respondent makes and has made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

Leg sores all healed.

Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME, the ointment discovery which helped me heal up my 20-year-old leg sores after everything else had failed.

Relieves Itching Immediately.

For Eczema, Open Leg Sores, . . . KIPZEME OINTMENT.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief:

- (a) That Kipzeme heals all leg sores;
- (b) That Kipzeme Ointment heals open leg sores, old leg sores, running sores, aggravated eczema;
- (c) That Kipzeme Ointment is an adequate remedy in the treatment of old, aggravated leg sores, skin eruptions, eczema, and kindred ailments.

In truth and in fact, "Kipzeme Ointment" does not heal all leg sores, nor is it an adequate remedy in cases of aggravated eczema, or in the healing of old leg sores, running sores and other skin conditions. In truth and in fact, the representations made by the respondent with respect to the nature and effect of his pharmaceutical preparation when used are grossly exaggerated, false, misleading, and untrue, as said preparation will not accomplish in all cases the results claimed for it.

PAR. 4. There are among the competitors of the respondent in commerce as herein described, manufacturers of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof and into the purchase of respondent's product in such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 4 in interstate commerce as herein described. As a consequence thereof, substantial injury is done by respondent to competition in commerce, among and between the various States of the United States, and in the District of Columbia.

PAR. 6. Said acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute

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unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 March 17, 1937 issued and served its complaint in this proceeding upon respondent, Louis Kipilman, an individual doing business under the trade name of Majestic Laboratories, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 24, 1937, 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 stated 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. The respondent, Louis Kipilman, is an individual, having his principal office and place of business located at 128-04 111th Avenue, Richmond Hill, Long Island, N. Y. Respondent for more than one year last past has been and still is, engaged in the manufacture of a pharmaceutical preparation, known as "Kipzeme Ointment," intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments. He offers for sale and sells this product in commerce between the State of New York and the several States of the United States, and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from his place of business in the State of New York to purchasers located in States of the United

States other than the State of New York, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than one year last past has been in substantial competition with other individuals and with partnerships, corporations, and firms engaged in the manufacture of like and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, the respondent, in soliciting the sale of and selling his pharmaceutical preparation known as "Kipzeme Ointment," and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than one year last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various newspapers, periodicals, and publications and in other forms of printed matter, and by radio broadcasting and in other ways. In said ways and by said means, respondent makes and has made to the general public many unfair, misleading, and deceptive statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof. Among other statements and representations thus made by the respondent are the following:

Leg sores all healed.

Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME, the ointment discovery which helped me heal up my 20-year-old leg sores after everything else had failed.

Relieves itching immediately.

For Eczema, Open Leg Sores, . . . KIPZEME OINTMENT.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief that said preparation is a competent and adequate remedy for leg sores, running sores, aggravated cases of eczema, and other skin eruptions and kindred ailments.

PAR. 4. In truth and in fact, "Kipzeme Ointment" does not heal all leg sores, nor is it a competent and adequate remedy in cases of aggravated eczema, or in the healing of old leg sores, running sores and other skin conditions. The representations made by the respondent with respect to the nature and effect of his pharmaceutical

preparation when used are exaggerated, misleading, and deceptive. As a matter of fact, said preparation will not accomplish in many cases the results claimed for it.

PAR. 5. There are among the competitors of the respondent in commerce as herein described, manufacturers of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 6. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's product on account of such belief induced as aforesaid. Thereby trade is unfairly diverted to respondent from competitors who do not similarly advertise their respective products. As a consequence thereof, substantial injury is done by respondent to competition in commerce, among and between the various States of the United States, and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Louis Kipilman, an individual doing business under the trade name of Majestic Laboratories, 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 filed on March 24, 1937, by respondent admitting all 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 respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal

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Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Louis Kipilman, as an individual, and doing business under the trade name of Majestic Laboratories, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a pharmaceutical preparation now designated as "Kipzeme Ointment" or of a product of substantially the same ingredients or therapeutic effect sold under the name "Kipzeme Ointment" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation heals open leg sores, old leg sores, all leg sores, running sores, and aggravated cases of eczema;

2. That said preparation is a competent and adequate remedy or treatment for aggravated leg sores, skin eruptions, eczema, and kindred ailments;

and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon him of this order file with this Commission a report in writing setting forth the manner and form in which he has complied with this order.

IN THE MATTER OF

I. B. KLEINERT RUBBER COMPANY

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

Docket 2852. Complaint, June 26, 1936—Decision, Apr. 24, 1937

Where a corporation engaged in the manufacture of various types of water-proof garments for women and children, including baby pants sold under trade name "SOFTEX," and in sale thereof in competition with others engaged in sale of similar products or products for same and similar purposes who truthfully represented the same—

Caused representations and statements to be made in advertising matter circulated and distributed in the various States, to the effect that its said products were absolutely free from latex or any other form of gum rubber and were rubberless, facts being they were not thus free or rubberless, but contained rubber in waist bands and in leg openings;

With tendency to deceive and mislead substantial portions of purchasing public into erroneous belief that such representations were true, and with the result, as a direct consequence of such mistaken and erroneous beliefs thus induced, that consuming public was persuaded to purchase substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in selling products of same kind and nature in commerce and who truthfully advertised and represented the character and quality thereof, and means of deceiving consuming public was also placed in the hands of the retail purchaser by it in the labeling of its products as aforesaid; 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. Robert S. Hall* and *Mr. John J. Keenan*, trial examiners.

Mr. John Darsey for the Commission.

Nordlinger, Riegelman & Cooper, of New York City, 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 I. B. Kleinert Rubber Company, hereinafter referred to as respondent, has been and is 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: