

Syllabus

IN THE MATTER OF
LECHLER LABORATORIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3115. Complaint, Apr. 26, 1937—Decision, July 27, 1937*

Where a corporation engaged in manufacture, sale and distribution of its "569 Instantaneous Hair Lightener," direct to consuming public, in substantial competition with those engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia, in advertising its said preparation through media of price lists, advertisements, and other printed matter, published and circulated through the United States mails to customers and prospective customers in the various States and in said District—

- (a) Represented that bleaching agent of said product was not similar to peroxide and that it performed its bleaching action without said substance, and that it did not require or contain the same, and was superior to products which did contain such substance; and
- (b) Represented that said product was beneficial to permanent waves and bleached hair, and was harmless to the hair, and that it was the only preparation that would lighten the scalp, and that through use thereof there would be no more dark roots;

Facts being product in question did require peroxide, bleaching action of said product was not chemically different from those containing such substance of like strength, it did not perform its bleaching action without said substance, was not more beneficial to permanent waves and bleached hair than other similar and like preparations, or not only preparation that would lighten scalp, was not harmless to hair of users in many cases, and would not prevent dark roots, and aforesaid various representations were unfair, false, and misleading;

With effect of misleading substantial portion of consuming public in the several States and in said District, by inducing them mistakenly and erroneously to believe that said preparation required no peroxide, and that other representations with respect thereto, as hereinabove set forth, were true, and with tendency and capacity so to mislead and deceive distributors and purchasing public, and with effect of inducing members thereof to buy its said product on account of such erroneous beliefs, and of thereby diverting trade to it from competitors who do not make use of same or similar representations, acts or practices; 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. S. Brogdyne Teu II for the Commission.

Mr. Willis B. Rice, of New York City, for respondent.

Complaint

25 F. T. C.

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 Lechler Laboratories, Inc., a corporation, 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 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, Lechler Laboratories, Inc., is a corporation organized and doing business under the laws of the State of New York, having its principal place of business at 334 Audubon Avenue, city of New York, State of New York. It is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of a certain hair bleaching product designated as "Lechler '569' Instantaneous Hair Lightener" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said product is sold, respondent transports or causes the same to be transported from its principal place of business in the city of New York, State of New York, to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described product sold by 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 and with individuals, partnerships, and firms likewise engaged in business of distributing and selling hair bleaching and dyeing products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, respondent has caused to be printed and circulated through the United States mails to its customers and prospective customers in the various States of the United States catalogues, price lists and other printed matter. The respondent has also caused and still causes advertisements to be inserted in newspapers and magazines having a general interstate circulation. Each and all of the catalogues, price

lists, and advertisements contain statements which purport to be descriptive of the efficacy, value, and merit of the respondent's product. Among the statements made in the aforesaid catalogue, price list, newspaper and magazine advertisements, the following are representative:

LIGHTEN YOUR HAIR WITHOUT PEROXIDE

* * * to ANY shade you Desire

* * * SAFELY in 5 to 15 minutes

Careful, fastidious women avoid the use of peroxide because peroxide makes hair brittle. LECHLER'S INSTANTANEOUS HAIR LIGHTENER requires NO peroxide. Used as a paste, it can not streak. Eliminates "straw" look. BENEFICIAL TO PERMANENT WAVES AND BLEACHED HAIR. Lightens blonde hair grown dark. This is the only preparation that also lightens the scalp. No more dark roots. Used over 20 years by famous beauties, stage and screen stars and children. Harmless. Guaranteed. Mailed complete with brush for application. \$1.

PAR. 5. Through use of the foregoing statements and others similar thereto, the respondent represents, either directly or by implication, that the said Lechler's Instantaneous Hair Lightener requires no peroxide; that the bleaching agent of its product is not similar to peroxide and performs its bleaching action without peroxide; that its product does not contain peroxide and is superior to products containing peroxide; that it is beneficial to permanent waves and bleached hair; that it is the only preparation that will lighten the scalp; that through its use there will be no more dark roots; that it is harmless to the hair of the user.

PAR. 6. In truth and in fact, the respondent's product is composed of such ingredients that when said product is used its bleaching action is actually accomplished by hydrogen peroxide. Respondent's product does contain peroxide and its bleaching action is not substantially different from other products containing peroxide. Said product is not beneficial to permanent waves and bleached hair and has the same, or similar effect as other products using peroxide. It is not the only preparation that will lighten the scalp and its use will not prevent dark roots. As hair grows out, the new hair showing above the scalp will be the same color as the hair before use of the product. The respondent's product is not harmless to the hair of the user in many cases.

PAR. 7. Each and all of the false and misleading statements and the representations made by the respondent in designating or describing its product and the effectiveness of said product for lightening the hair and treating conditions of the hair and scalp in offering for sale and selling its said product were and are calculated to and had and now have a tendency and capacity to mislead a substantial por-

tion of the purchasing public into the erroneous belief that all of said representations are true and that said product will in truth accomplish the results claimed.

Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's product with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed and sold for use in the treatment of various conditions of the scalp and hair and other conditions named herein who truthfully represent the effectiveness of their respective products.

PAR. 8. The foregoing false and misleading statements and representations on the part of respondent are inducements for a substantial number of consuming purchasers to form the mistaken and erroneous beliefs above referred to and to buy the product distributed and offered for sale by respondent. And as a result, a substantial volume of trade has been and is now being diverted to respondent from competitors engaged in similar business who truthfully advertise and represent, through their catalogues, prices lists, and advertisements, the nature, merit and value of their products. As a consequence thereof, a substantial injury has been done to substantial competition in commerce among the several States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of respondent have been and are all to the prejudice of the public and respondent's competitors 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 April 28, 1937, issued and served its complaint in this proceeding upon respondent, Lechler Laboratories, 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,

a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and Willis B. Rice, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and answer thereto, and the stipulation as to the facts (respondent having waived the filing of brief); 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, Lechler Laboratories, Inc., is a New York corporation organized and doing business by virtue of and under the laws of the State of New York.

PAR. 2. Respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing "Lechler '569 Instantaneous Hair Lightener'" direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State from which shipment originated 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 "Lechler '569 Instantaneous Hair Lightener'" so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with individuals, partnerships, firms, and other corporations engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business as aforesaid, the respondent, in soliciting the sale of, and in selling, its product, and for the purpose of creating a demand on the part of the consuming public for said product, has for more than one year last past caused the product to be advertised through the media of price lists, advertisements, and other printed matter published, issued, and circulated through the United States mails to its customers and prospective

Findings

25 F. T. C.

customers in the various States of the United States and in the District of Columbia. In said ways and by said means respondent has made to the general public many unfair, false, and misleading statements with reference to the commodities offered for sale by it.

PAR. 6. Among the unfair, false, and misleading statements made by the respondent with reference to the commodities offered for sale by it are the following:

That Lechler Instantaneous Hair Lightener requires no peroxide; that the bleaching agent of said product is not similar to peroxide; that the said product performs its bleaching action without peroxide; that said product does not contain peroxide; that said product is superior to products containing peroxide; that said product is beneficial to permanent waves and bleached hair; that said product is the only preparation that will lighten the scalp; that through the use of said product there will be no more dark roots; and that said product is harmless to the hair of the user.

PAR. 7. The aforesaid representations are untrue in that Lechler Instantaneous Hair Lightener does require peroxide, and that the bleaching action of said product is not chemically different from the products containing peroxide of like strength. Said product does not perform its bleaching action without peroxide. Said product does contain peroxide. Said product is not more beneficial to permanent waves and bleached hair than other similar and like preparations. Said product has the same or similar action as other products using peroxide of like strength. Said product is not the only preparation that will lighten the scalp, and its use will not prevent dark roots, and said product is not harmless to the hair of the users in many cases.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise herein described is to mislead a substantial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe that:

Lechler Instantaneous Hair Lightener requires no peroxide; the bleaching agent of the Hair Lightener is not similar to peroxide; the Hair Lightener performs its bleaching action without peroxide; its product does not contain peroxide; it is superior to products containing peroxide; it is beneficial to permanent waves and bleached hair; it is the only preparation that will lighten the scalp; through its use there will be no more dark roots; and it is harmless to the hair of the user.

619

Order

PAR. 9. The use of each and all of the foregoing false and misleading statements and representations as herein set out has had, and now has, a tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that the said statements and representations are true, and has induced and still induces members of the public to purchase the product of said respondent on account of said erroneous beliefs. Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make use of the same or similar representations, acts, or practices, and substantial injury has been done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Lechler Laboratories, Inc., a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and a stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Willis B. Rice, counsel for respondent (respondent having waived the filing of a brief), 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 Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent, Lechler Laboratories, Inc., its officers, representatives, agents, and employes, in connection with the advertising, offering for sale, sale, and distribution, in interstate commerce, or in the District of Columbia, of a hair bleaching product now known as Lechler Instantaneous Hair Lightener, or of any similar preparation containing substantially the same ingredients under the same or under any other name or names, do forthwith cease and desist from representing, directly or indirectly, through

Order

25 F. T. C.

price lists, circulars, labels, or any other form of printed matter, or by radio broadcasting or in any other manner:

1. That the bleaching agent of said product is not similar to peroxide, and that it performs its bleaching action without peroxide;
2. That said product does not require or contain peroxide;
3. That said product is superior to products containing peroxide;
4. That said product is beneficial to permanent waves and bleached hair, and is harmless to the hair of the user; and
5. That said product is the only preparation that will lighten the scalp, and that through the use of said product there will be no more dark roots.

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 the order herein set forth.

Syllabus

IN THE MATTER OF
NODOZ LABORATORIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2840. Complaint, June 10, 1936—Decision, July 28, 1937*

Where a corporation engaged in sale and distribution, to wholesale and retail dealers for ultimate resale to public, of "NoDoz Awakeners," vegetable concentrate with caffeine, made for it by the manufacturer in accordance with its formula, and designed to keep users from drowsiness and to keep them awake when sleepy or tired, in general competition with sellers of the class of refreshment and invigorator containing caffeiens, such as coffee, tea, and coca-cola, and with the same general therapeutic effects, and who do not advertise and otherwise represent their said products as having merit and therapeutic value which they do not have; in soliciting sale of and selling said products through advertisements in newspapers and periodicals, and in other forms of printed matter, and through radio broadcasts, circulated among the various States to members of the public—

- (a) Represented that use of said product would counteract or overcome effects of drinking alcoholic beverages, and would have beneficial effect on persons indulging in use of alcoholics, counteracting "alcoholic effects during the party and the 'morning after'", etc.;
- (b) Represented that said "NoDoz Awakeners" were "tablets made of a pure vegetable concentrate under the U. S. Pure Food and Drug Laws"; and
- (c) Represented that more than a million automobile drivers take said preparation to keep awake and alert in long hours of driving, and that said tablets "Keep awake the sleepy motorist, truck driver," etc.;

Facts being said tablets did not overcome or counteract effects of use of alcoholic beverages or have any beneficial effect on indulgers in use thereof, they were not made under formula approved by Pure Food and Drug Administration, number of users and endorsers of said product was greatly exaggerated, and representations aforesaid were grossly exaggerated, false, misleading, and untrue;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of its aforesaid representations were true, and with result that number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs induced by its said acts and representations, purchased a substantial volume of its product, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of like and similar caffeine-containing preparations, and who truthfully represent the effectiveness of their products and results to be obtained from use 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.

Before *Mr. Charles P. Vicini* and *Mr. Miles J. Furnas*, trial examiners.

Mr. P. C. Kolinski and *Mr. Joseph C. Fehr* for the Commission.

Elliott, Atkinson & Sitton, of Sacramento, Calif., for respondent.