

Complaint

IN THE MATTER OF

ARPAUL COMPANY, INC.

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

Docket 2748. Complaint, Mar. 20, 1936—Decision, Aug. 12, 1937

Where a corporation engaged in sale and distribution of its "ORTOSAN" preparation for facial treatment, in substantial competition with others engaged in sale in interstate commerce of creams and other preparations used and useful for beautification of face and skin—

(a) Falsely represented, in radio broadcasts, advertisements of interstate circulation, letters, pamphlets, and other forms of advertising media, that said preparation nourished and rejuvenated skin or face, and that use thereof would restore youthful contours to face, chin, and neck, eliminate sagging lines, erase wrinkles and blemishes, and banish large pores and fine lines, and immediately produce a fresh, healthy skin, and that it would keep the face looking younger, and that it was five creams in one and combined everything needed to give one a beautiful skin; and

(b) Falsely represented, as aforesaid, that said product was the highest praised skin preparation in the world and had been endorsed by leading medical authorities and leading beauty specialists;

With effect of misleading and deceiving many prospective purchasers of preparations for use in beautification of face and skin, and of causing them to believe that representations made by it were true, and that said preparation possessed properties and efficacy claimed, and of causing substantial portion of such persons, by reason of such erroneous beliefs, to buy said "ORTOSAN," and with result thereby of unfairly and unlawfully diverting trade in commerce to it from its competitors who do not misrepresent in any manner the properties or efficacy of their products; to their substantial injury and to the injury of the public:

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

Mr. Astor Hogg for the Commission.

Mr. William Huck, Jr., 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 Arpaul Company, 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

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the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Arpaul Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 333 West 52nd Street, New York, in said State. It is now, and for more than one year last past has been, engaged in advertising, selling, and distributing a preparation recommended for facial treatment designated "Ortosan," and other toilet preparations, and now causes, and for more than one year last past has caused, its said preparations, when sold by it, to be shipped from its place of business in New York, N. Y., to the purchasers thereof, some located in the State of New York and others located in various States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade in commerce in said preparations sold by the 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 corporations and with persons, firms, and partnerships engaged in the sale of facial creams and other preparations similar to those sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, in soliciting the sale of and selling its preparation designated "Ortosan," respondent now represents, and for more than one year last past has represented, in and by radio broadcasts, advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media as follows:

Ortosan 5-in-1 is the highest praised skin preparation in the world;

Ortosan is different from any cream or ointment in existence * * * Perfected during a period of over twenty-five years;

Ortosan Skin food, 5-in-1 especially, is a master stroke in its combination for rejuvenating and beautifying the skin. Created in Germany and perfected during a period of over 25 years;

Mme. Louise Hermance is well known today throughout the world and her name will, in all probability, live through the ages. For she alone, by vigilant experimentation during twenty-five years, has discovered what alchemists and scientists have sought for centuries in vain * * * The Secret of Preserving Youth and Beauty;

Ortosan has been endorsed by leading medical authorities and beauty specialists;

A single application demonstrates the superiority of Ortosan over all other creams or lotions. When you use Ortosan you need no other cream of any

kind. Ortosan is a cleansing cream, a bleaching cream, a vanishing cream, a nourishing cream, and a rejuvenation cream, all in one, taking the place of 5 separate creams. That is why Ortosan is the most economical of all beauty preparations;

Ortosan combines in One Cream everything that is needed to give a woman a beautiful skin. It restores youthful contours of face, chin and neck, eliminates sagging lines, erases wrinkles and skin blemishes, and imparts Immediately a fresh, healthy skin;

You notice, the first time you use Ortosan, that it makes the face look younger and keeps it younger;

Ortosan, spelled Ó-R-T-O-S-A-N, is the amazing discovery of a famous skin specialist;

Ortosan combines in One cream everything that is needed to give a woman a beautiful skin. It produces a skin of velvety softness with the freshness and bloom of a young girl. It banishes large pores, erases wrinkles and fine lines, but most wonderful of all, it restores the youthful contours of cheek, chin and neck by completely eliminating the sagging of the skin around the chin and neck.

PAR. 3. In truth and in fact, the preparation "Ortosan" is not five creams in one and is not the highest praised skin preparation in the world; it is not unlike many similar creams on the market and was not perfected during a period of over 25 years; it has not been endorsed by leading medical authorities and beauty specialists; it is not a nourishing cream nor a rejuvenation cream; it does not take the place of five separate creams, it does not restore youthful contours or any contours of the face, chin or neck, and it does not eliminate sagging lines, erase wrinkles and skin blemishes, and its application does not immediately impart a fresh, healthy skin; the first application to the face does not make the face look younger and neither will the preparation keep it looking younger; the preparation "Ortosan" does not combine in one cream everything that is needed to give a woman a beautiful skin, it does not and will not banish large pores or erase wrinkles or fine lines, and it does not restore the youthful contour of the cheek or chin or neck in any manner whatsoever.

PAR. 4. The representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the belief that respondent's product designated "Ortosan" contains five creams in one and is the highest praised skin preparation in the world; that it is different from any other cream or ointment in existence and was perfected during a period of over 25 years; that the preparation has been endorsed by leading medical authorities and beauty specialists; that said preparation has the property and capacity to nourish and rejuvenate the skin and to restore youthful contours of the face, chin and neck, and eliminate sagging lines, erase wrinkles and skin blemishes; that the preparation is five face creams in one; that its use will make the face

look younger and keep it younger; that it banishes large pores of the skin, erases wrinkles and fine lines and restores youthful contours of the face and neck. The said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said preparation because of the erroneous beliefs engendered as above set forth and to unfairly divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics similar to the preparation sold by respondent.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce similar face creams and preparations who do not misrepresent the properties or qualities or therapeutic virtues, functions, uses or effects of their said competing products.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and the 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."

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 20, 1936, issued and subsequently served its complaint in this proceeding upon respondent Arpaul Company, 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, W. T. Kelley, Chief Counsel for the Federal Trade Commission, and William Huck, Jr., counsel for the respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently approved by the Commission and was duly recorded and filed in the office of the Commission. Thereafter, the proceed-

ing regularly came on for final hearing before the Commission on said complaint, the answer thereto, and said stipulation as to the facts; 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, Arpaul Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 333 West 52nd Street, New York, in said State. It is now, and for more than one year last past has been, engaged in selling and distributing a preparation recommended for facial treatment designated "Ortosan", and now causes, and for more than one year last past has caused, its said preparation, when sold by it, to be shipped from its place of business in New York, N. Y., to the purchasers thereof, some located in the State of New York, and others located in various States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade in commerce in said preparation sold by the 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 corporations and with persons, firms, and partnerships engaged in the sale, in interstate commerce, of creams and other preparations used, and useful, for the beautification of the face and skin.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, in soliciting the sale of, and selling, its preparation designated "Ortosan," respondent now represents, and for more than one year last past has represented, in and by radio broadcasts, advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media, as follows:

Ortosan 5-in-1 is the highest praise skin preparation in the world;

Ortosan is different from any cream or ointment in existence * * *

Perfected during a period of over twenty-five years;

Ortosan Skin food, 5-in-1 especially, is a master stroke in its combination for rejuvenating and beautifying the skin. Created in Germany and perfected during a period of over 25 years;

Mme. Louise Hermance is well known today throughout the world and her name will in all probability, live through the ages.

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For she alone, by vigilant experimentation during twenty-five years, has discovered what alchemists and scientists have sought for centuries in vain—The Secret of Preserving Youth and Beauty;

Ortosan has been endorsed by leading medical authorities and beauty specialists;

A single application demonstrates the superiority of Ortosan over all other creams or lotions. When you use Ortosan you need no other cream of any kind. Ortosan is a cleansing cream, a bleaching cream, a vanishing cream, a nourishing cream, and a rejuvenation cream, all in one, taking the place of 5 separate creams. That is why Ortosan is the most economical of all beauty preparations;

Ortosan combines in One Cream everything that is needed to give a woman a beautiful skin. It restores youthful contours of face, chin and neck, eliminates sagging lines, erases wrinkles and skin blemishes, and imparts immediately a fresh, healthy skin;

You notice, the first time you use Ortosan, that it makes the face look younger and keeps it younger;

Ortosan, spelled O-R-T-O-S-A-N, is the amazing discovery of a famous skin specialist;

Ortosan combines in One cream everything that is needed to give a woman a beautiful skin. It produces a skin of velvety softness with the freshness and bloom of a young girl. It banishes large pores, erases wrinkles and fine lines, but most wonderful of all, it restores the youthful contours of cheek, chin and neck by completely eliminating the sagging of the skin around the chin and neck.

PAR. 3. In the manner and through the means above stated the respondent represents that the preparation "Ortosan" is five creams in one, that it is the highest praised skin preparation in the world and that it has been endorsed by leading medical authorities and leading beauty specialists. The respondent represents that the preparation "Ortosan" is a nourishing and rejuvenating cream and that it will restore youthful contours to the face, chin and neck, and that it will eliminate sagging lines and erase wrinkles and skin blemishes, and that its application will immediately produce a fresh healthy skin. The respondent represents that the first application of the preparation will make the face look younger and that its use will keep the face looking younger, and that there is combined in the preparation everything that is needed to give a woman a beautiful skin. The respondent also represents that the use of the preparation will banish large pores and fine lines.

PAR. 4. The preparation "Ortosan" is not five creams in one, nor is it the highest praised skin preparation in the world. The preparation "Ortosan" has not been endorsed by leading medical authorities and leading beauty specialists. The preparation "Ortosan" is not a nourishing cream, nor is it a rejuvenation cream. The use of the preparation "Ortosan" will not restore youthful contours, or

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any contours at all, to the face, chin, neck or other part of the body, nor will its use eliminate sagging lines, erase wrinkles and skin blemishes, or banish large pores and fine lines, and its application will not immediately produce a fresh healthy skin. The first application of the preparation will not make the face look younger, nor will the use of the preparation keep the face looking younger. The preparation "Ortosan" does not combine in one cream everything that is needed to give a woman a beautiful skin.

PAR. 5. The representations used by the respondent in connection with the sale and distribution of its preparation "Ortosan" in said commerce, as hereinabove set out, are false and misleading and deceptive and have the tendency and capacity to and do mislead and deceive many prospective purchasers of preparations for use in the beautification of the face and skin and cause them to believe that the representations made by the respondent are true and that said preparation possesses the properties and efficacy claimed; and cause a substantial portion of such persons, because of such erroneous belief, to purchase the preparation "Ortosan," thereby unfairly and unlawfully diverting trade in said commerce to the respondent from its competitors who do not misrepresent in any manner the properties or efficacy of their products, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Arpaul Company, 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 the respondent and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel of the Federal Trade Commission, and William Huck, Jr., counsel for the respondent, the filing of briefs having been waived, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act

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

It is ordered, That the respondent, Arpaul Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the preparation known as, and sold under the name, "Ortosan" or any other preparation, under whatever name sold, composed of similar ingredients and possessing properties similar to the preparation "Ortosan," in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation is five creams in one;
2. That said preparation is the highest praised skin preparation in the world and has been endorsed by leading medical authorities and leading beauty specialists;
3. That said preparation nourishes the skin;
4. That said preparation rejuvenates the skin or face;
5. That the use of said preparation will restore youthful contours to the face, chin and neck, and will eliminate sagging lines, erase wrinkles and skin blemishes, and banish large pores and fine lines and immediately produce a fresh healthy skin;
6. That the use of the preparation will keep the face looking younger;
7. That there is combined in said preparation everything that is needed to give one a beautiful skin.

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.

Syllabus

IN THE MATTER OF
MUTUAL BRIEF CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2889. Complaint, Aug. 7, 1936—Decision, Aug. 12, 1937*

Where a corporation engaged in manufacture of leather luggage, and in use in such manufacture of two types of leather employed in making such luggage, namely, top grain leather and split leather, and in sale and distribution of such leather luggage in commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution of leather goods in commerce, as above set forth, and including many competitors who sell leather luggage made from top grain leather and also that made from split leather, and properly describe former, as variously known by manufacturers, dealers, and purchasing public, as "cowhide" only, "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain," and properly describe latter, as similarly generally known, as "split leather" luggage—

Offered and sold, in interstate commerce, its split leather goods, labeled and branded "cowhide" only, or "warranted genuine cowhide," in distinction from its top grain leather goods labeled and branded by it as "genuine top grain cowhide," notwithstanding fact such split leather luggage, thus branded, was not made from outside or top side of hide, or from top grain, as understood in trade and by purchasing public, but was made from split leather, i. e., lower portion of hide, and from which top grain portion has been cut away;

With capacity and tendency to mislead and deceive purchasing public and substantial portion of trade into erroneous belief that its said luggage, thus branded and labeled, was made from top grain leather, for goods of which purchasing public has generally pronounced and distinct preference, and with result of placing in hands of wholesalers and retailers means whereby said luggage, made of split leather as above set forth, and goods of which can be made to resemble those of other in appearance, is passed off to purchasing public as top grain leather luggage, and consuming public purchased substantial volume of its aforesaid product, and trade was unfairly diverted to it from its competitors likewise engaged in manufacture, sale, and distribution of leather luggage, and who truthfully brand and represent kind of leather used in manufacture of their 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.

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles J. Fagg, of Newark, N. J., for respondent.