

## Syllabus

IN THE MATTER OF  
LAVOPTIK 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 3188. Complaint, July 24, 1937—Decision, Nov. 8, 1937*

Where a corporation engaged in sale and distribution of its "Lavoptik," alleged remedy for diseases and ailments of the eye, to consumers in other states and in the District of Columbia, through medium of direct sales to druggists, optometrists, oculists, and ophthalmologists, for resale to retail trade and thus to ultimate consumer and general public, in competition with those similarly engaged, including among such competitors those engaged in sale of preparations recommended for use in treatment of such diseases, ailments or conditions as those mentioned in its advertising, but who truthfully represent their products and the therapeutic value which may be attributed thereto, and honestly vend the same; in advertising its said "Lavoptik" through the radio, magazines, newspapers and mails—

- (a) Represented that the same had been endorsed by "6,000 eyesight specialists," notwithstanding fact it had not been and was not recommended by 6,000 graduate medical doctors especially trained in the treatment of the eyes; and
- (b) Represented, directly or by inference, that said preparation would restore strength to the eyesight, and that use thereof would be a constant protection for the eyes, and that it constituted a cure or remedy for, and would heal, diseases of the eye, facts being preparation was composed of a boric base combined in distilled water with certain substances, and constituted an astringent lotion or eyewash for use in local, non-systemic, non-functional, non-constitutional, non-refractive ailments, and diseases of the eye, and would not heal or cure infections and diseases thereof due to constitutional, functional, systemic, or refractive ailments, diseases, and causes, nor restore sight to, nor strengthen, the eyes, nor heal, cure, or rejuvenate strained or impaired eyesight, nor protect the eyes from strain;

With tendency and capacity to cause members of purchasing public to form erroneous beliefs and impressions as above indicated, and with result that many thereof, acting under such erroneous beliefs, bought its said preparation, and with capacity and tendency further to unfairly divert to it trade of competitors engaged in selling, in interstate commerce, preparations or remedies truthfully advertised, represented and recommended for use in connection with treatment of various diseases and ailments enumerated by it; to the substantial injury of competitors in commerce:

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

*Mr. Carrel F. Rhodes* for the Commission.

*Sanborn, Graves, Appel, Andre & Morton*, of St. Paul, Minn., for respondent.

## Complaint

## 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 Lavoptik 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 of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lavoptik Company, Inc., is a corporation organized and existing under the laws of the State of Minnesota. Respondent's plant, office and principal place of business is located at Michigan Avenue and 7th Street, St. Paul, Minn. Said respondent is now, and for more than one year last past has been, engaged in the business of manufacturing or compounding, advertising, selling and distributing a lotion, or eye wash, commonly known and designated as "Lavoptik Eye Wash." It now causes, and for more than one year last past has caused, said preparation, when sold, to be shipped from its place of business in St. Paul, Minnesota, to purchasers thereof, some located in the State of Minnesota, others located in various other 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 eye lotions and eye washes, and other preparations similar to that sold by respondent in commerce 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 said business as described in paragraph 1 hereof, in soliciting the sale of and selling its product, designated as "Lavoptik Eye Wash," respondent now represents, and for more than one year last past has represented, in newspapers, magazines, pamphlets, circulars, letters, wrappers, radio broadcasts, and other forms of advertising media having an interstate circulation, and in a booklet entitled "How to Safeguard Your Eyes," which it issues, ships, and distributes in large number to the public generally throughout the various States of the United

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States and in the District of Columbia, through its distributors, sales branches, and sales people, as follows:

**INFLAMED EYES?** Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

**IRRITATED EYELIDS?** Bathe them with Lavoptik, prompt relief.

**EYES SORE? TIRED?** Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feeling, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

\* \* \* Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

**Four Important Suggestions:**

1. Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.

2. After driving exposure to dust heat or wind or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.

3. If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.

4. In the morning, if your eyes are stiff and heavy, you will be astonished how much Lavoptik eye bath will help them.

**PAR. 3.** In truth and in fact, the preparation "Lavoptik Eye Wash" has not been endorsed and approved by 6,000 graduate medical doctor eyesight specialists, or eye specialists, and said preparation, "Lavoptik," is not a cure for diseases of the eye or impaired vision, and will not strengthen the nerves of the eye, nor relieve eye strain, conjunctivitis, and other diseases of the eye, and will not make eyes healthier and more efficient, but is merely an eye wash composed of a boric acid base in distilled water with camphor, sodium chloride, and hydrastine hydrochloride, which can in no way influence the delicate nerves of the eye, or heal diseases of the eye.

**PAR. 4.** The representations of respondent as aforesaid are false and grossly exaggerated and have had and do have a capacity to confuse, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondent's product, designated "Lavoptik," is different from other eye lotions or eye washes, and that the preparation has been endorsed by 6,000 graduate medical doctors, especially trained in the treatment of the eyes; that said preparation has the property to heal and rejuvenate strained and impaired eyesight, and is an effective treatment for all forms of

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## Findings

defective eyesight, no matter from what cause. The said representations of respondent have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of erroneous beliefs engendered as above set forth, and to divert trade unfairly from competitors of respondent engaged in the sale of eye lotions and eye washes similar to the preparation sold by respondent in commerce in and among the various States of the United States, and deceives the public and injures competitors, and places in the hands of others the means whereby the public are deceived, and competitors are injured. There are among competitors of respondent many who sell and distribute in commerce similar lotions and eye washes and preparations for the treatment of the eyes, who do not misrepresent the properties, the qualities or the therapeutic virtues, functions or effects of their said competing products.

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

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 24th day of July 1937, issued, and on the 26th day of July, 1937, served its complaint in this proceeding upon said respondent, Lavoptik Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 11, 1937, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent by its counsel, Monte Appel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may 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 said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the

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proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Lavoptik Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Michigan Avenue and Seventh Street, St. Paul, Minn. Respondent is now and for several years last past has been engaged in the business of selling and distributing an alleged remedy known as "Lavoptik," designed by respondent for treatment of human beings suffering from diseases and ailments of the eye.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent, Lavoptik Company, Inc.; in response to orders received, has offered its said preparation for sale and has sold and transported and caused the same to be transported in commerce among the several States of the United States direct from its aforesaid place of business in St. Paul, Minn., to consumers located at points in the several States of the United States other than the State of Minnesota, and in the District of Columbia.

In the course and conduct of such selling, respondent has been and now is engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling in like commerce preparations for use in the treatment of the same or similar ailments and diseases.

PAR. 3. Respondent, in connection with the sale and distribution of its said product, "Lavoptik," has advertised the same by radio and in magazines and newspapers sent through the mail. Respondent sells direct to druggists, or pharmacists, optometrists, oculists, ophthalmologists, who in turn sell to the retail trade, thus reaching the ultimate consumer and general public. Sales are not limited to druggists, or pharmacists, however, nor to licensed graduate medical physicians and surgeons. Respondent company has used the United States mail in distributing its product in interstate commerce and has shipped large quantities by express or freight or by parcel post.

Through the use of radio, magazines, newspapers and mail, as aforesaid, respondent has advertised and represented its preparation, "Lavoptik," is a remedy for and affords prompt relief from various ailments and affections of the eye.

Among the statements and representations made by Lavoptik Company, Inc., in the course and conduct of its business in the sale and distribution of its preparation, "Lavoptik," are statements and representations as follows:

**INFLAMED EYES?** Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

**IRRITATED EYELIDS?** Bathe them with Lavoptik, prompt relief.

**EYES SORE? TIRED?** Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feeling, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

\* \* \* Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four important suggestions:

1. Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.
2. After driving, exposure to dust, heat or wind, or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.
3. If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.
4. In the morning, if your eyes are stiff and heavy, you will be astonished how much a Lavoptik eye bath will help them.

The use by respondent of these representations leads the purchasing public to believe and has a tendency to create in their minds the erroneous impression that the preparation "Lavoptik" has been endorsed or approved by 6,000 medical doctors especially trained in the treatment of the eyes and that the preparation is an effective remedy for granulated eyelids, soreness and diseases of the eye, no matter from what cause and that it will heal or cure any and all infections and diseases of the eye and impairments of the vision.

PAR. 4. The preparation, "Lavoptik," is composed of a boric base, combined in distilled water with camphor sodium chloride and hydrastrine hydrochloride, and is an astringent lotion or eyewash to be used in local non-systemic, non-functional, non-constitutional, non-refractive ailments, and diseases of the eye.

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PAR. 5. The various statements and representations made by respondent through the medium of radio and by mail, as set out and enumerated in paragraph 3 herein, in selling and offering for sale its preparation, "Lavoptik" in the respective states of the United States and in the District of Columbia were and are, as set out and described in paragraph 2 herein, false, deceptive, and misleading. "Lavoptik" preparation has not been and is not recommended by 6,000 graduate medical doctors, especially trained in the treatment of the eyes and will not heal or cure infections and diseases of the eye due to constitutional, functional, systemic or refractive ailments, diseases and causes. "Lavoptik" will not restore sight to, or strengthen, the eyes and will not heal, cure or rejuvenate strained or impaired eyesight, and will not protect the eyes from strain.

PAR. 6. There are among the competitors of respondent, corporations, partnerships, firms, and persons who are engaged in the sale of preparations which are recommended for use in the treatment of such diseases, ailments or conditions as those mentioned by respondent in its advertising, but who truthfully represent their products and the therapeutic value which may be attributed to them, and honestly vend the same.

PAR. 7. The use of the aforesaid false and misleading representations and practices on the part of the respondent in the sale and offering for sale of its preparation known and designated as "Lavoptik," has had and now has the tendency and capacity to cause members of the purchasing public to form the aforesaid erroneous beliefs and impressions. Acting under such erroneous beliefs induced by the various representations of the respondent, as herein detailed, many of said members of the public have purchased respondent's preparation, "Lavoptik." The aforesaid representations and practices on the part of the respondent have and have had the capacity and tendency to unfairly divert to respondent the trade of competitors engaged in selling in interstate commerce preparations or remedies which are truthfully advertised and represented and which are recommended for use in connection with the treatment of the various diseases and ailments enumerated by the respondent. Thereby substantial injury has been done and is being done by respondent to competitors 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, Lavoptik Company, Inc., are to the prejudice of the public and of respondent's

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## Order

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 the agreed stipulation of facts entered into between the respondent herein, Lavoptik Company, Inc., and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Lavoptik Company, Inc., its officers, representatives, and employees in connection with the sale or offering for sale by it in interstate commerce or in the District of Columbia of a preparation now designated as Lavoptik or any other preparation of substantially similar ingredients or effect, whether designated by that name or some other name, forthwith cease and desist from:

1. Representing, through any means whatsoever, that said preparation is endorsed or recommended by any designated number of eyesight specialists for any purpose unless and until said preparation is in fact endorsed or recommended by said number of graduate doctors of medicine who specialize in the treatment of the eyes.

2. Representing, directly or by inference, that said preparation restores strength to the eyesight; that the use of said preparation will be a constant protection to the eyes; that the said preparation is a cure or remedy for or will heal any named diseases of the eye.

*It is further ordered*, That the respondent shall, within 60 days after the 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 shall have complied with this order.

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## IN THE MATTER OF

CROXONOL SALES CORPORATION, AND ALFRED W.  
LUBLIN, INDIVIDUALLY AND AS PRESIDENT OF  
CROXONOL SALES CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3192. Complaint, July 29, 1937—Decision, Nov. 8, 1937*

Where a corporation engaged in manufacture, sale and distribution of its so-called "Croxon Method" preparation for treatment of superfluous hair, in commerce among the various States and in the District of Columbia, in advertising the same through price lists, newspapers, periodicals, and other advertising media, printed, published and circulated through the mails to customers and prospective customers located in the various States and in said District—

Represented that said product would permanently remove and completely stop growth of superfluous hair, and was guaranteed permanently to remove same from face, arms and legs, and would keep user free from hair and well-groomed, and that no odor resulted from use of said product, facts being said various statements or representations as to nature, merit and effect of its said product were exaggerated, misleading, and false;

With tendency and capacity to mislead a substantial portion of consuming public into erroneous belief that all said representations were true and into purchase of its said product on account of such belief, and with result that trade was diverted from competitors similarly engaged as manufacturers and distributors of like and similar commodities, and who truthfully advertise and represent the nature and merit of their respective products and refrain from advertising or representing, through their catalogs or other advertising media, that their commodities have a nature and merit which they do not have; 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.

## 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 Croxonol Sales Corporation and Alfred W. Lublin, individually and as President of Croxonol Sales Corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition