

Complaint

25 F. T. C.

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

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in commerce, as "commerce" is defined in said act of Congress, 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, Croxonol Sales Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 142 West 24th Street, city of New York, State of New York.

Alfred W. Lublin, an individual, is President of the Croxonol Sales Corporation, and has his principal office and place of business at 142 West 24th Street, city of New York, State of New York, and directs and controls sales policies of the respondent Croxonol Sales Corporation.

Respondents are now, and for more than one year last past, have been engaged in the manufacture, sale, and distribution of a certain preparation for the treatment of superfluous hair known as the "Croxon Method" 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, respondents transport or cause the same to be transported from their 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 respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the business of distributing and selling preparations for the treatment of superfluous hair 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 their said business, respondents have caused to be printed and circulated through the United States mails to their customers and prospective customers in the various states of the United States catalogs, price lists, and other printed matter. Respondents have also caused, and still cause, their advertisements to be inserted in newspapers and magazines having a general interstate circulation. Each and all of the catalogs, price lists, and advertisements contain statements which purport to be descriptive of

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the efficacy, value, and merit of the respondents' product. Among the statements made in the aforesaid catalogs, price lists, and newspaper and magazine advertisements, the following are representative:

SUPERFLUOUS HAIR TROUBLES ENDED

once and for all with the sure CROXON Method. Removes all hair on first application, keeps you well groomed and hair-free during the time needed to completely stop the growth * * * GUARANTEED SAFE FOR FACE, arms, legs * * * No odor. \$1.25 at drug and dept. stores or Croxonol Sales Corp., 142 W. 24th St., New York City.

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PAR. 5. All of said statements above set out, together with many similar statements appearing in respondents' advertising literature purport to be descriptive of respondents' product. In all of their advertising literature respondents represent through statements and representations herein set out, and other statements of similar import and effect, that:

(1) Their product will remove superfluous hair and when first applied; (2) their product will keep the user thereof well groomed and free from hair, and completely stop the growth of superfluous hair; (3) their product is guaranteed to remove superfluous hair from the face, arms, and legs; (4) and there will be no odor resulting from the use of respondents' said product.

PAR. 6. The representations made by the respondents with respect to the nature and effect of their product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the respondents' product will not remove superfluous hair; said product will not keep the user thereof well groomed, and completely stop the growth of superfluous hair; and said product is not guaranteed to remove superfluous hair from the face, arms and legs. There is an odor resulting from the use of the said product.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents in designating or describing their product and the effectiveness of said product for removing and treating conditions resulting from superfluous hair growth in offering for sale and selling their product were, and are, calculated to, and has and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that said product will in truth accomplish results claimed.

Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondents as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling similar products or other products designed and sold for use in removing and treating conditions resulting from superfluous hair growth and other conditions named herein who truthfully represent the effectiveness of their respective products. As a consequence thereof, a substantial injury has been done to competition in commerce among the several States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of respondents have been and are all to the prejudice of the public and respondents' 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 August 2, 1937, issued and served its complaint in this proceeding upon respondents Croxonol Sales Corporation and Alfred W. Lublin, individually, and as president of Croxonol Sales Corporation, charging them 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 respondents' answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and respondent Croxonol Sales Corporation, which said stipulation was thereafter approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the stipulation as to the facts (respondent Croxonol Sales Corporation having waived the filing of briefs); and the Commission having duly considered the same and being now fully advised in the premises, finds that this pro-

ceeding 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, Croxonol Sales Corporation, is a corporation having its principal place of business and office in the city of New York, State of New York.

PAR. 2. The corporate respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing a certain preparation for the treatment of superfluous hair known as the "Croxon Method" in commerce between and among the various States of the United States and in the District of Columbia.

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 the shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said product so sold and distributed by the corporate respondent among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business said respondent, in soliciting the sale of, and in selling its product, and for the purpose of creating a demand upon the part of the consuming public for said product, has for more than one year last past caused its product to be advertised through the media of price lists, newspapers, magazines, and other advertising media printed, published, and circulated through the United States mails to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodity offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain false and misleading representations concerning respondent's product. The product sold and distributed by respondent is represented to the purchasing public in the following manner:

SUPERFLUOUS HAIR TROUBLES ENDED

once and for all with the sure CROXON Method. Removes all hair on first application, keeps you well groomed and hair-free during time needed to con-

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pletely stop the growth * * GUARANTEED SAFE for Face, Arms, Legs
* * * No odor. \$1.25 at drug and dept. stores or Croxonol Sales Corp., 142
W. 24th St., New York City.

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PAR. 5. The statements as set out above together with many similar statements appearing in respondent's advertising literature, and other statements of similar import, represent to the consuming public that:

(1) Its product will permanently remove superfluous hair; (2) its product will keep the user thereof well groomed and free from hair, and will completely stop the growth of superfluous hair; (3) its product is guaranteed to remove superfluous hair from face, arms, and legs; and (4) there will be no odor resulting from the use of respondent's product.

PAR. 6. In truth and in fact the representations made by the respondent with respect to the nature, merit and effect of its product are exaggerated and misleading. Respondent's product will not permanently remove superfluous hair. It will not keep the user thereof free from hair and well groomed, and will not completely stop the growth of superfluous hair. Said product is not guaranteed to permanently remove superfluous hair from face, arms, and legs; and there is an odor resulting from the use thereof.

PAR. 7. There are among the competitors of respondent in commerce as herein set out manufacturers and distributors of like and similar commodities who truthfully advertise and represent the nature and merit of their respective products, and who refrain from advertising or representing through their catalogs or other advertising media that the commodities offered for sale by them have a nature and merit which they do not have. All of the aforesaid statements and representations made by the respondent in designating or describing its product, and in offering for sale and selling said product, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all the said representations are true, and into the purchase of respondent's said product on account of said belief.

As a result of the representations made by respondent trade has been diverted from those competitors of respondent engaged in similar businesses, hereinbefore referred to. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent, Croxonol Sales 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, the answer of respondents, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and the respondent Croxonol Sales Corporation, 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 the respondent, Croxonol Sales Corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of a preparation for the treatment of superfluous hair now known as the "Croxon Method" or of any other similar preparation designed for similar usage whether sold under that name or under any other name, in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

(1) that said product will permanently remove superfluous hair; (2) that said product will keep the user thereof free from hair and well groomed, and will completely stop the growth of superfluous hair; (3) that said product is guaranteed to permanently remove superfluous hair from face, arms, and legs; (4) that there will be no odor resulting from the use of respondent's said product.

It is further ordered, That as to the individual respondent Alfred W. Lublin, the case be dismissed without prejudice due to the death of said individual respondent on September 12, 1937.

It is further ordered, That the respondent Croxonol Sales Corporation 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
P. H. HANES KNITTING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 1134. Order, Nov. 12, 1937

Order modifying Commission's previous modified order of April 7, 1926, in 10 F. T. C. 23, in view of provisions of so-called Miller-Tydings Act (Title VIII of an Act of Congress approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes"), so that said order, directing respondent to cease and desist from resale price maintenance practices as therein set forth, shall not, effective as of August 17, 1937, "prohibit contracts or agreements prescribing minimum prices for the resale of any commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the respondent or other producer or distributeor thereof, and which is in free and open competition with commodities of the same general class produced by others than respondent, when the contract or agreement is lawful as applied to intrastate transactions in the State in which such resale is to be made, or into which the commodity is to be transported for resale, under the laws or public policy of said State."

Before *Mr. John W. Addison*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Mr. H. H. Shelton, of Washington, D. C. and *Manly, Hendren & Womble* and *Mr. T. O. Moore*, of Winston Salem, N. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

On this day there is taken up the petition of the above respondent, entitled "Petition and motion to vacate order to cease and desist," but praying that all orders to cease and desist entered against respondent under the above docket number be either modified or set aside; and,

It appearing that on December 21, 1925, the Commission issued its order that respondent cease and desist from certain business methods and practices therein enumerated; and that on April 7, 1926, said order was superseded by a modified order to cease and desist, modifying said previous order to the extent and in the particulars in said modified order set forth; and,

It also appearing to the Commission that said modified order of April 7, 1926, should be modified in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes."