

IN THE MATTER OF ROYAL LOTUS CORPORATION

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

Docket 3254. Complaint, Oct. 25, 1937—Decision, Feb. 5, 1938

Where a corporation engaged in manufacture, sale, and distribution of its "Royal Lotus" hair preparation, and of its "Creme Royale" and "Creme Helies" line of cosmetics to purchasers at various points in other States and in the District of Columbia, in substantial competition with those likewise engaged in distribution and sale of similar preparations for treatment of the hair and skin, in commerce among the various States and in said District; in advertising its said products in newspapers of general circulation throughout the United States, and through advertising folders and literature similarly circulated to customers and prospective customers—

- (a) Represented that said "Royal Lotus" preparation was "in no sense a hair dye" and restored "true, natural color" and was "absolutely harmless," and prevented hair diseases and stopped and overcame falling hair, and was a corrective or cure for dandruff, itching scalp, dry hair, and alopecia, and preserved and grew hair, facts being it was a dye, imparted artificial color to hair, would not restore faded, streaked, or gray hair to its natural color or bring back natural color of hair of whatever type, shade, or color, and it did not stop or overcome falling hair, was not positive corrective for dandruff and itching scalp, or absolutely harmless, and did not accomplish other results as above claimed or correct "dry hair"; and
- (b) Represented, as aforesaid, that its said "Creme Royale" and "Creme Helies" preparations would penetrate the outer epidermis of the skin so as to reach and benefit the lower fleshy layers thereof and have beneficial effect in renovating the skin, counteracting and overcoming blemishes, lines, wrinkles, blackheads, sunburn, enlarged pores, and impurities, through such statements as " * * * because of its very nature * * * penetrates the outer layers of the skin and reaches within," and " * * * it is behind the skin that Creme Royale does its best work," and " * * * aids the growing tissues and encourages the living cells," and " * * * clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft, and velvety," etc., facts being said preparations did not renovate skin nor penetrate to lower fleshy layers thereof or benefit skin and assist nature counteract causes of blemished skin, did not prevent lines and wrinkles, etc., as above claimed and indicated, and representations made with respect to beneficial value of its aforesaid preparations were misleading;

With tendency and capacity to mislead a substantial portion of purchasing public into erroneous belief that all such representations were true, and with result that a number of the consuming public, as direct consequence of mistaken and erroneous beliefs induced by its advertisements and misrepresentations, purchased substantial volume of its said products, and trade was unfairly diverted to it from those likewise engaged in preparation and sale of hair preparations and cosmetics and who truthfully advertise the same; 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. George Foulkes for the Commission.

Amend & Amend, 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 Royal Lotus Corporation, a corporation, 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, Royal Lotus Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 13 Ackerman Avenue, Ramsey, N. J. Respondent is now, and has been for some time, engaged in the business of manufacturing and distributing in commerce, as herein set out, a hair preparation designated "Royal Lotus," and a line of cosmetics designated "Creme Royale" and "Creme Helies."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its office and place of business in the State of New Jersey to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made. Respondent now maintains a constant current of trade in commerce in said products manufactured, distributed, and sold by it 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 and firms likewise engaged in the business of distributing and selling hair preparations and cosmetics and kindred preparations for treatment of the hair and skin in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals to purchase the preparation "Royal Lotus," respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has

printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Certain advertising matter used by the respondent in representing the efficacy of Royal Lotus is herein set out, as illustrative of respondent's representations, but is not all-inclusive. Such advertisements are as follows:

GROW HEALTHY, LUXURIANT, BEWITCHING HAIR

Father Lepetitjean's marvelous French discoveries now yours.

This astonishing Regenerateur restores true, natural color, beautifies, preserves and grows hair—prevents all hair diseases—overcomes falling hair, dandruff, itching scalp—remedies and prevents brittleness of permanents without affecting wave. Royal Lotus is absolutely harmless—truly a miracle of rare herbs. Not a dye.

Royal Lotus is in no sense a hair dye and leaves no stains on scalp or linen.

It is an unadulterated, pure hygienic product—a positive corrective for dandruff, scurf and itching, and an unfailing restorative of the natural color to the hair. It also strengthens the scalp and stops falling hair, and generally cures alopecia (baldness).

Not only rejuvenates the color of the hair, but also has an added and almost miraculous bonus—it protects and helps to grow hair.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that its product designated "Royal Lotus": (1) Will restore faded, streaked, or gray hair to its natural color or will reproduce or bring back the natural color of such hair of whatever type, shade or color; (2) is not a dye and does not impart an artificial color to the hair; (3) stops or overcomes falling hair and is a positive corrective for dandruff and itching scalp, and generally cures alopecia; (4) is absolutely harmless; and (5) preserves and grows hair and prevents all hair diseases, and corrects "Dry Hair."

PAR. 5. The representations made by respondent with respect to the efficacy of its product designated "Royal Lotus" are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said "Royal Lotus" will not restore faded, streaked, or gray hair to its natural color, and will not reproduce or bring back the natural color of hair of whatever type, shade, or color. Said preparation is a dye and imparts an artificial color to the hair. Royal Lotus does not stop or overcome falling hair and is not a positive corrective for dandruff and itching scalp and does not cure alopecia. Said preparation is not absolutely harmless and does not preserve and grow hair and prevent all hair diseases. Royal Lotus does not correct "Dry Hair."

PAR. 6. Further in the course and operation of its business, respondent manufactures and sells a line of cosmetics designated

"Creme Royale" and "Creme Helies," and in order to induce individuals to purchase said cosmetics, respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Certain advertising matter used by respondent in representing the beneficial value of "Creme Royale" and "Creme Helies" is herein set out as illustrative of respondent's representations, but is not all-inclusive. Said advertisements are as follows:

CREME HELIES clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft and velvety.

Creme Helies * * * keeps the skin free from those impurities which, after all, usually cause poor complexions.

Fine lines, wrinkles, sunburn, enlarged pores, tender, irritated skin can all be guarded against by the use of Creme Helies.

Creme Royale * * * because of its very nature * * * penetrates the outer layers of the skin and reaches within.

* * * it is behind the skin that Creme Royale does its best work.

Fine lines, wrinkles, sunburn, the harmful effects of wind and sun, dust, and chemicals in the air, enlarged pores, blackheads, tender, irritated skin—all these can be largely negated by the protective qualities of Creme Royale.

Creme Royale * * * penetrates the outer portions, soothing and softening them, and * * * aids the growing tissues and encourages the living cells.

In all of its advertising literature, respondent represents through statements and representations herein set out and through statements of similar import and effect that its cosmetics designated "Creme Royale" and "Creme Helies": (1) Renovate and tone the skin; (2) penetrate to the lower fleshy layers of the skin; (3) benefit the skin tremendously and assist nature to counteract the causes of blemished skin; (4) prevent lines and wrinkles; (5) keep the skin free from impurities; and (6) protect the skin against enlarged pores, blackheads, and sunburn.

PAR. 7. The aforesaid representations made by respondent with respect to the beneficial value of its cosmetics are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, said cosmetics do not renovate and tone the skin, nor do they penetrate to the lower fleshy layers of the skin. Creme Royale and Creme Helies do not benefit the skin and assist nature to counteract the causes of blemished skin. Said cosmetics do not prevent lines and wrinkles and do not keep the skin free from impurities. They do not protect the skin against enlarged pores, blackheads, and sunburn.

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PAR. 8. Each and all of the false and misleading statements and misrepresentations made by respondent, as hereinabove set forth, in its advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling its products, had, and now has, 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. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchase a substantial volume of respondent's products. As a result, trade has been unfairly diverted to respondent from corporations, firms, and partnerships likewise engaged in the preparation and selling of hair preparations and cosmetics, who truthfully advertise their products. As a consequence thereof, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce within the intent and meaning 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 October 25, 1937, issued and, on October 26, 1937, served its complaint in this proceeding upon respondent, Royal Lotus Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 24, 1938, the respondent filed a substitute answer, in which answer it admitted all the material allegations of the complaint to be true, and stated that it waived hearing on the charges set forth in the complaint and that, without further evidence or intervening procedure, the Commission might issue and serve upon it 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. Respondent, Royal Lotus Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 13 Ackerman Avenue, Ramsey, N. J. Respondent is now, and has been for some time, engaged in the business of manufacturing, selling, and distributing a hair preparation designated "Royal Lotus," and a line of cosmetics designated "Creme Royale" and "Creme Helies."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its place of business in the State of New Jersey to purchasers thereof located at various points in States of the United States other than the State of New Jersey, and in the District of Columbia. Respondent now maintains a constant current of trade in commerce in said products manufactured, distributed, and sold by it 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 and firms likewise engaged in the business of distributing and selling hair preparations and cosmetics and kindred preparations for treatment of the hair and skin in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals to purchase the preparation "Royal Lotus," respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Among others of similar import, the following statements are made in said advertisements concerning the efficacy of the preparation "Royal Lotus," in treating the hair and scalp:

GROW HEALTHY, LUXURIANT, BEWITCHING HAIR

Father Lepetitjean's marvelous French discoveries now yours.

This astonishing Regenerateur restores true, natural color, beautifies, preserves and grows hair—prevents hair diseases—overcomes falling hair, dandruff, itching scalp—remedies and prevents brittleness of permanents without affecting wave. Royal Lotus is absolutely harmless—truly a miracle of rare herbs. Not a dye.

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Royal Lotus is in no sense a hair dye and leaves no stains on scalp or linen.

It is an unadulterated, pure hygienic product—a positive corrective for dandruff, scurf and itching, and an unfailing restorative of the natural color to the hair. It also strengthens the scalp and stops falling hair, and generally cures alopecia (baldness).

Not only rejuvenates the color of the hair, but also has an added and almost miraculous bonus—it protects and helps to grow hair.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that its product designated “Royal Lotus”: (1) Will restore faded, streaked, or gray hair to its natural color or will reproduce or bring back the natural color of such hair of whatever type, shade or color; (2) is not a dye and does not impart an artificial color to the hair; (3) stops or overcomes falling hair and is a positive corrective for dandruff and itching scalp, and generally cures alopecia; (4) is absolutely harmless; and (5) preserves and grows hair and prevents all hair diseases, and corrects “dry hair.”

PAR. 5. The representations made by respondent with respect to the efficacy of its product designated “Royal Lotus” are misleading. In truth and in fact, said “Royal Lotus” will not restore faded, streaked, or gray hair to its natural color, and will not reproduce or bring back the natural color of hair of whatever type, shade, or color. Said preparation is a dye and imparts an artificial color to the hair. Royal Lotus does not stop or overcome falling hair and is not a positive corrective for dandruff and itching scalp and does not cure alopecia. Said preparation is not absolutely harmless and does not preserve and grow hair and prevent all hair diseases. Royal Lotus does not correct “dry hair.”

PAR. 6. Respondent manufactures and sells a line of cosmetics designated “Creme Royale” and “Creme Helies,” and in order to induce individuals to purchase said cosmetics, respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Among others of similar import, the following statements are made in said advertisements concerning the benefits to be obtained from using said preparations “Creme Royale” and “Creme Helies”:

CREME HELIES clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft and velvety.

Creme Helies * * * keeps the skin free from those impurities which, after all, usually cause poor complexions.

Fine lines, wrinkles, sunburn, enlarged pores, tender, irritated skin can all be guarded against by the use of Creme Helies.

Creme Royale * * * because of its very nature * * * penetrates the outer layers of the skin and reaches within.

* * * it is behind the skin that Creme Royale does its best work.

Fine lines, wrinkles, sunburn, the harmful effects of wind and sun, dust and chemicals in the air, enlarged pores, blackheads, tender, irritated skin—all of these can be largely negated by the protective qualities of Creme Royale.

Creme Royale * * * penetrates the outer portions, soothing and softening them and * * * aids the growing tissues and encourages the living cells.

In all of its advertising literature, respondent represents through statements and representations herein set out and through statements of similar import and effect that its cosmetics designated "Creme Royale" and "Creme Helies": (1) Renovate and tone the skin; (2) penetrate to the lower fleshy layers of the skin; (3) benefit the skin tremendously and assist nature to counteract the causes of blemished skin; (4) prevent lines and wrinkles; (5) keep the skin free from impurities; and (6) protect the skin against enlarged pores, blackheads and sunburn.

PAR. 7. The representations made by respondent with respect to the beneficial value of its preparations "Creme Royale" and "Creme Helies," are misleading.

In truth and in fact, said preparations do not renovate the skin, nor do they penetrate to the lower fleshy layers of the skin. Creme Royale and Creme Helies do not benefit the skin and assist nature to counteract the causes of blemished skin. Said cosmetics do not prevent lines and wrinkles and do not keep the skin free from impurities. They do not protect the skin against enlarged pores, blackheads, and sunburn.

PAR. 8. The acts and practices of the respondent as hereinabove set forth, in using said false representations in its advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling its products, as above set forth, had, and now have, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchase a substantial volume of respondent's products. As a result, trade has been unfairly diverted to respondent from corporations, firms, and partnerships likewise engaged in the preparation and selling of hair preparations and cosmetics, who truthfully advertise their products. As a consequence thereof, substantial injury has been done and is now being done by

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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, Royal Lotus Corporation, 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 substitute answer filed herein on January 24, 1938, by respondent admitting all of 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 Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Royal Lotus Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetic and toilet preparations now designated as "Royal Lotus," "Creme Royale," and "Creme Helies," or any other products of substantially the same ingredients sold under those names, or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the preparation now designated as "Royal Lotus" (a) is not a dye and does not impart an artificial color to the hair, and that it will restore, reproduce, or bring back the natural color of hair of any type, shade, or color which has become faded, streaked, or gray; (b) is harmless and prevents all hair diseases, stops or overcomes falling hair, and is a corrective or cure for dandruff, itching scalp, "dry hair," and alopecia, and preserves and grows hair.

2. That the preparations now designated as "Creme Royale" or "Creme Helies" will penetrate the outer epidermis of the skin so as to reach and benefit the lower fleshy layers of the skin, or so as to have any beneficial value in renovating the skin, counteracting, or over-

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coming blemishes, lines, wrinkles, blackheads, sunburn, enlarged pores, and impurities;
and from making any other representations of similar tenor or import.

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

IN THE MATTER OF

MAX SCHREIBER, PHILIP W. SIMONS, AND WILLIAM KLOMPUS, INDIVIDUALLY, AND TRADING AS DE LUXE MANUFACTURING COMPANY

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

Docket 2294. Complaint, Feb. 7, 1935—Decision, Feb. 9, 1938

Where three partners engaged in sale and distribution of radio receiving sets and other articles of merchandise to purchasers in practically all the States and in the District of Columbia, in soliciting sale thereof—

Furnished and sent, in response to its advertisements for agents and representatives in periodicals of general circulation, sample pull cards, order blanks, descriptive literature, and advertisements depicting merchandise thus being offered, and circulars describing their said plan of selling such merchandise and of allotting same as prizes to operators of such cards, under plan by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed under various tabs of aforesaid cards, and received radio, or nothing, dependent upon success or failure in selecting feminine name corresponding to that concealed under card's seal depicting such instrument, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of their products, with knowledge and intent that said cards had been, were, and would be used in sale and distribution of their said merchandise to public by lot or chance, contrary to public policy, and in competition with many who were opposed to use of such cards in sale and distribution of their products and refrained from furnishing same;

With result that sale of similar and like merchandise by such competitors was thereby injuriously affected, and trade was diverted from them to said partners by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition, and with tendency and capacity unfairly to divert such trade, as aforesaid; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

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 Max Schreiber, Philip W. Simons, and William Klompus, individually and as copart-