

Complaint

IN THE MATTER OF

BARNETT C. HELZBERG, TRADING AS HELZBERG'S
DIAMOND SHOP

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

Docket 3295. Complaint, Jan. 4, 1938—Decision, Mar. 8, 1938

Where an individual engaged as sole owner and general manager of retail jewelry stores in five midwestern cities; in advertising certain diamonds and diamond rings in newspapers of interstate circulation—

- (a) Represented "They are perfect according to the specifications of the United States Federal Trade Commission of Washington, D. C.," and "Certified perfect diamonds. Certified perfect diamonds are 'perfect' according to the specifications approved by the Federal Trade Commission of Washington, D. C."; and
- (b) Furnished to purchasers of said diamonds and diamond rings certificates containing, among other things, statements and representations to same effect as those used in aforesaid advertisements in regard to said diamonds being perfect according to specifications of, or approved by, said commission;

Facts being it had neither fixed nor promulgated any standard of perfect or other diamonds, nor inspected, found or certified said or any other diamonds as perfect;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that said representations were true, and into purchase of said articles on account of such erroneous and mistaken beliefs thus induced, and with result that substantial trade in said commerce was unfairly diverted to him from competitors who do not misrepresent and guarantee their diamonds and diamond rings, and with capacity and tendency so to mislead, deceive, and divert to said competitors' substantial injury:

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

Mr. Wm. T. Chantland for the Commission.

Mr. Joseph Cohen, of Kansas City, Kans., 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 Barnett C. Helzberg, trading under the name Helzberg's Diamond Shop, 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

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respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Barnett C. Helzberg, trading under the name Helzberg's Diamond Shop, is the sole owner and general manager of five retail jewelry stores located in Kansas City, Kans.; Kansas City, Mo.; Wichita, Kans.; Topeka, Kans., and Des Moines, Iowa. His business includes the sale and distribution of diamonds and diamond rings. His principal place of business is at 612 Minnesota Avenue, Kansas City, Kans. Respondent in the course and conduct of his business sells and distributes his diamonds and diamond rings to purchasers and members of the public and causes said wares when sold, to be transported from the State of Kansas and the other States of origin of his shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in offering for sale and selling diamonds and diamond rings to purchasers and members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent caused advertisements to be inserted in newspapers having an interstate circulation, containing, among other matter, the following statements and representations, and others of similar substance and import, as to the diamonds and diamond rings offered for sale and sold by him:

(a) They are perfect according to the specifications of the United States Federal Trade Commission at Washington, D. C.

(b) Certified Perfect Diamonds. Certified Perfect Diamonds are "Perfect" according to the Specifications approved by the Federal Trade Commission at Washington, D. C.

Respondent furnishes to purchasers of said diamonds and diamond rings certificates containing, among other things, statements and representations to the same effect as those used in said advertisements in regard to said diamonds being perfect according to the specifications of, or approved by, the Federal Trade Commission.

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The said advertisements and the certificates furnished in accordance therewith to purchasers of his diamonds and diamond rings constitute and are representations by respondent that the diamond rings sold by him, when accompanied by such certificates, are in fact perfect in accordance with a standard and specifications required by the Federal Trade Commission. The intent of respondent in so representing and certifying his said diamonds and diamond rings, and the effect thereof, is to mislead and deceive purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated specifications and a required standard for perfect diamonds, and that these diamonds of respondent meet those requirements.

In truth and in fact the Federal Trade Commission has neither fixed specifications nor promulgated any standard for perfect diamonds.

Said advertisements and certificates are also intended by respondent to imply, and they do imply, that the diamonds sold with such certificates have been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds, in accord with certain specifications made by it. In truth and in fact the Federal Trade Commission has neither promulgated any such specifications, nor inspected nor found nor certified said diamonds to be perfect diamonds.

All of said advertisements, statements, representations, and implications are deceptive, misleading, and false, and tend to and do deceive and mislead purchasers into the purchase of respondent's said diamonds and diamond rings in the erroneous belief that said representations and implications are true.

PAR. 4. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their certificates.

PAR. 5. The acts and practices of the respondent as above alleged in the course of selling and offering for sale his diamonds and diamond rings in commerce as described herein have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade in said commerce has been unfairly diverted to the respondent from those of his competitors referred to in paragraph 4 hereof who do not so misrepresent their certificates and diamonds and diamond rings. In consequence thereof, substantial injury has been, and is being, done to respondent's com-

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petitors in commerce among and between the various States of the United States.

PAR. 6. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 January 4, 1938, issued, and on January 8, 1938, served, its complaint in this proceeding upon respondent Barnett C. Helzberg charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent on February 10, 1938, filed an answer to said complaint, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and said answer; and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said respondent Barnett C. Helzberg, trading under the name of Helzberg's Diamond Shop, is the sole owner and general manager of five retail jewelry stores located in Kansas City, Kans.; Kansas City, Mo.; Wichita, Kans.; Topeka, Kans.; and Des Moines, Iowa. His business includes the sale and distribution of diamonds and diamond rings. His principal place of business is at 612 Minnesota Avenue, Kansas City, Kans. In the course and conduct of his business respondent sold and distributed his diamonds and diamond rings to purchasers and members of the general public and caused said wares, when sold, to be transported from his places of business in the States of Kansas, Missouri, and Iowa to the purchasers thereof located at various points in the several States of the United States other than the States of origin of said shipments.

PAR. 2. Respondent is engaged in substantial competition with various other individuals, and with firms and corporations engaged in offering for sale and selling diamonds and diamond rings to pur-

chasers and members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of his business, in order to induce the purchase of certain of his said diamonds and diamond rings, inserted in newspapers having an interstate circulation, advertisements containing, among other matters, the following statements and representations, and others of similar substance and import, as to the diamonds and diamond rings offered for sale and sold by him:

(a) They are perfect according to the specifications of the United States Federal Trade Commission of Washington, D. C.

(b) Certified perfect diamonds. Certified perfect diamonds are "perfect" according to the specifications approved by the Federal Trade Commission of Washington, D. C.

PAR. 4. In the course and conduct of his business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of his said diamonds and diamond rings, respondent furnished to purchasers of said diamonds and diamond rings, certificates containing, among other things, statements and representations to the same effect as those used in said advertisements in regard to said diamonds being perfect according to the specifications of, or approved by, the Federal Trade Commission.

PAR. 5. Respondent's said advertisements and the certificates furnished in accordance therewith to purchasers of his diamonds and diamond rings constitute and are representations by respondent that the diamonds and diamond rings sold by him, when accompanied by said certificates, are in fact perfect in accordance with standards and specifications required by the Federal Trade Commission. The effect of so representing and certifying his diamonds and diamond rings was to mislead and deceive purchasers of said diamonds and diamond rings into the erroneous belief that the Federal Trade Commission had in fact fixed and promulgated a required standard for perfect diamonds and that these diamonds of respondent met that requirement. The general form, arrangement, and text of said certificates implied that the diamonds sold with such certificates had been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds.

PAR. 6. All of said statements, advertisements, representations, and implications are deceptive, misleading, and false in that the Federal Trade Commission has neither fixed nor promulgated any standard of perfect or other diamonds, nor inspected, nor found, nor certified said diamonds, or any other diamonds, to be perfect.

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PAR. 7. There are among the competitors of respondent many who do not misrepresent their diamonds and diamond rings and the basis of their guarantees.

PAR. 8. The acts and practices of respondent as above set out in the course of selling and offering for sale his diamonds and diamond rings in commerce, as described herein, have a capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof substantial trade in said commerce has been unfairly diverted to the respondent from those of his competitors who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, substantial injury has been, and is being done to respondent's 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 respondent Barnett C. Helzberg are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on February 10, 1938, by respondent admitting all 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 respondent, Barnett C. Helzberg, trading under the name of Helzberg's Diamond Shop, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of diamonds and diamond rings in interstate commerce or in the District of Columbia do

forthwith cease and desist in any manner directly or indirectly from representing:

1. That the diamonds and diamond rings offered for sale and sold by respondent are perfect, "according to the specifications of the United States Federal Trade Commission at Washington, D. C." or "according to the specifications approved by the Federal Trade Commission at Washington, D. C.";

2. That the Federal Trade Commission has fixed or promulgated any standard for perfect or other diamonds;

3. That the Federal Trade Commission has inspected said diamonds or that it has found and certified them to be perfect diamonds;

4. That any agency of the United States Government has fixed or promulgated any standard for perfect or other diamonds, until and unless a standard has been fixed and promulgated by such an agency;

5. That an agency of the United States Government has inspected said diamonds, or that it has found and certified them to be perfect diamonds, until and unless such an agency has inspected said diamonds and found and certified them to be perfect.

It is further ordered, That said respondent Barnett C. Helzberg shall within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
DERMOLAV LABORATORIES, INC.

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

Docket 2813. Complaint, May 21, 1936—Decision, Mar. 10, 1938

Where a corporation engaged in manufacture, sale, and distribution of hair and scalp preparations for prevention and cure of baldness and stimulation of hair growth under designation "Dermolav Liquid" and "Dermolav Compound"—

Represented in newspaper and magazine advertising, and through leaflets, booklets, and letters circulated among prospective purchasers, that its said preparations constituted effective treatments for all types and forms of baldness and new ways of removing the several causes of falling hair, scalp diseases, and baldness, through such statements as "WHY MEN GET BALD * * *". Full particulars of an amazing new discovery that enables people who have dandruff, scalp itch, falling hair, or baldness to harmlessly remove the congested thin outer layer of scalp skin and activate the dormant hair roots to grow new hair. WILL BE SENT, ABSOLUTELY FREE, to any sufferer who will write," etc., and referred to aforesaid letters in support of its claims, etc.;

Notwithstanding fact neither of said products nor any of the ingredients therein contained were beneficial, either singly or in combination, in removing causes of baldness, and were in no wise a scalp food and did not involve any new scientific methods in treatment of said ailment and other scalp conditions, would not grow hair or revive or bring to life so-called dormant hair roots, nor cure alopecia areata; and were not harmless preparations for removing congested skin from the scalp, but resulted in a rash for people who were hypersensitive to elements therein contained;

With effect of misleading and deceiving substantial part of purchasing public into false and erroneous belief that said representations and claims were true, and that said preparations would cure falling hair and prevent baldness, etc., and were harmless, new, and scientific, and with capacity and tendency so to do, and with result that public, acting in mistaken and erroneous beliefs thus induced, purchased a substantial volume of its said products, and trade was unfairly diverted to it from competitors engaged in manufacture and sale or sale and distribution of treatments intended for such various conditions, and who truthfully represented nature and curative value of their respective products;

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Reuben J. Martin and *Mr. S. Brogdyne Teu, II* for the Commission.

Mr. John A. Bolles, of New York City, for respondent.