

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.

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 Dermolav Laboratories, Inc. 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Dermolav Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1700 Broadway in the city of New York, within the State of New York. Said respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of preparations for use on the scalp, known as Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, and in the distribution thereof between and among the various States of the United States. Respondent causes said preparations, when sold by it, to be transported to the purchasers thereof located in the State of New York and in various other States of the United States. The business conducted by said respondent is a mail-order business, a large portion of its sales, to wit, 99 percent, being conducted through the mails, and the remaining portion of the sales, to wit, 1 percent, being local. There is now, and for more than 2 years last past has been, a constant current of trade and commerce by respondent in said preparations between and among the various States of the United States. In the course and conduct of its said business the said respondent is now, and for more than 2 years last past has been, in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations engaged in the manufacture and interstate sale of preparations for use on the scalp.

PAR. 2. In the regular course and conduct of its said business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising through the medium of local tabloid papers such as "The Daily Mirror" and "The Daily News," and also through magazines with a national distribution such as "Physical Culture," "Picture Play," "True Story," "Radio Guide," and the Detective Story group.

In addition to the advertising which has been and now is being done by said respondent using newspapers and magazines as media, as hereinbefore set forth, said respondent has been and now is furnishing to

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purchasers and to persons making inquiry as a result of the advertisements used by respondent, as hereinabove set forth, additional information other than that contained in its newspaper advertisements. This information has been and now is contained in various circulars, pamphlets, letters, and folders. All of said advertisements were and are intended by said respondent, Dermolav Laboratories, Inc., to be read by the general public and in particular by prospective purchasers of preparations for use on the scalp, and to cause and induce said prospective purchasers to buy those preparations manufactured and sold by said respondent.

PAR. 3. Said respondent, in its said advertisements of its said preparations known as Dermolav Liquid Scalp Peel and Dermolav Scalp Compound manufactured and sold by it, has made and is now making various false, deceptive and misleading statements concerning said preparations. Among the said statements which said respondent has used and is now using in its advertisements in newspapers, magazines, circulars, pamphlets, folders, and letters are statements to the effect that its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will grow hair; that the said products, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will cure alopecia areata, which is a disease causing bald spots on the head; that Dermolav Scalp Compound is a scalp food; that the Dermolav treatment is a new way of removing several causes of falling hair, and will grow new hair; that Dermolav Liquid Scalp Peel is a harmless liquid for removing congested skin from the scalp; and that the Dermolav treatment is beneficial in reviving dormant roots and restoring hair.

The above statements made, and now being made, by said respondent in its said advertisements were, and are now, false, deceptive, and misleading because in truth and in fact its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will not grow hair; its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will not cure alopecia areata, which is a disease causing bald spots on the head; Dermolav Scalp Compound is not a scalp food; the Dermolav treatment is not a new method and will not remove several causes for falling hair and baldness, and will not cause new hair to grow; Dermolav Liquid Scalp Peel is not a harmless liquid for removing congested skin from the scalp, but its use may result in serious injury; and the Dermolav treatment will not revive dormant hair roots, and will not cause a new growth of hair.

PAR. 4. Said respondent, in the regular course and conduct of its said business, has for more than 2 years last past in its advertisements contained in circulars, pamphlets, folders, and letters represented to prospective purchasers that said respondent would pay to any user of

its product the sum of \$50 for photographs showing the head before and after using respondent's Dermolav treatment, and showing new hair as a result of said treatment. Said offer has been made and is now being made by said respondent as an inducement to the purchasing public to purchase its said preparations, with the full knowledge on the part of respondent that said preparations would not grow hair, and that therefore respondent would not be required to make the payments as offered by it.

PAR. 5. The use by said respondent, Dermolav Laboratories, Inc., of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraphs 3 and 4 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will in truth and in fact grow hair; will cure alopecia areata; that Dermolav Scalp Compound is a skin food; that the Dermolav treatment is a new way of removing several causes of falling hair and baldness, and will grow new hair; that Dermolav Liquid Scalp Peel is a harmless liquid for removing congested skin from the scalp; and that the Dermolav treatment is beneficial for dormant hair roots, and will promote the growth of new hair, and has thereby induced and does now induce the consuming public and especially prospective purchasers of preparations for use on the scalp, acting in said erroneous belief, to purchase Dermolav Liquid Scalp Peel and Dermolav Scalp Compound in preference to preparations for use on the scalp offered for sale by other manufacturers and distributors who do not falsely, deceptively, and misleadingly advertise their products. As a result of such false, deceptive, and misleading representations on the part of said respondent trade has been diverted to respondent from other manufacturers and distributors of preparations for use on the scalp, who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury to its competitors has been done and is now being done by said respondent.

PAR. 6. Said false, deceptive, and misleading representations of said respondent contained in its advertising have resulted in injury to respondent's competitors, and to retail dealers and distributors and in prejudice to the buying public, 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, and 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 May 21, 1936, issued and served its complaint in this proceeding upon respondent, Dermolav Laboratories, Inc., a corporation, charging it with the use of unfair methods of competition in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, and in opposition to the allegations of the complaint by F. C. McIntyre, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition 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. The respondent, Dermolav Laboratories, Inc., is a corporation, organized and doing business under the laws of the State of New York. Its principal office and place of business are at 1700 Broadway, in the city of New York, State of New York. It has been for more than 1 year last past, and now is, engaged in the manufacture, sale and distribution of products designated as Dermolav Liquid and Dermolav Compound, together known as Dermolav Method and Dermolav Scalpfood, preparations recommended, advertised and sold as treatments for the hair and scalp, for the prevention and cure of baldness, and the stimulation of the growth of hair.

PAR. 2. Respondent's products are compounded and packaged at its place of business in the city of New York, State of New York, and sold to individual purchasers and to retail dealers purchasing for resale to the consuming public. When orders are received for respondent's said products, it causes them to be shipped through the United States mail from its place of business in the city of New York, State of New York, to the purchasers thereof located at various points in

the various States of the United States other than the State of New York, and in the District of Columbia. Since the date the respondent began the manufacturing and compounding of its said products, it has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now and has been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of preparations designed and sold as treatments for the hair and scalp, for the prevention of baldness and the stimulation of the growth of hair, in commerce among and between the several States of the United States and in the District of Columbia. Ninety-eight percent of the respondent's business is done by mail.

PAR. 4. The respondent advertises its said product in newspapers and magazines having a general circulation, as follows:

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 to Dermolav Lab., Desk 47, 1700 Broadway, New York, N. Y. Send no money. No obligation.

Respondent, in addition to advertising its compound in newspapers and magazines having a general circulation, has advertised and now advertises its Dermolav Liquid and Dermolav Compound by leaflets, booklets and letters circulated among prospective purchasers. The following is representative of the statements and claims made by the respondent in said advertising matter as to the value of respondent's products as a treatment for the hair and scalp for the prevention of baldness and the stimulation of the growth of hair:

And so it is with these voluntary letters of praise we receive. You may remark—"You can't grow hair on a bald part"—but, my friend, as so many of these letters of praise state—"I have grown hair where bald," how can any one deny such a possibility?

Now why not put your own mind at rest on this subject of starting a new hair growth, where bald, or where hair is thinning out, by getting the above complete treatment on the easy terms offered? You may yet live to thank the day I decided to "throw out this last life line to you."

Respondent has made numerous other statements and representations in its advertising copy and literature to the effect that its products manufactured, sold and distributed by it will cure alopecia areata, a disease causing bald spots on the head, that its product is

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a scalp food, that its method is a new way of removing the causes of falling hair, that its products will grow new hair, that they are harmless preparations for removing congested skin from the scalp, and that the products are beneficial in reviving so-called dormant hair roots and restoring hair.

By means of the foregoing statements, the respondent represents to purchasers and prospective purchasers that its products are effective treatments for all types and forms of baldness and that respondent's products are new ways of removing the several causes of falling hair, scalp diseases, and baldness.

PAR. 5. The quantitative formula of the Dermolav Liquid is as follows:

Resorcinol.....	12 oz.
Alcohol.....	8 oz.
Euresol	8 cc.
Water.....	100 oz.
Sodium benzoate	$\frac{3}{4}$ oz.

The quantitative formula of the Scalpfood is as follows:

Pilocarpine hydrochloride.....	$\frac{3}{4}$ oz.
Oxycholesterin.....	1 lb.
Crude Oil.....	1 lb. 4 oz.
Castor Oil.....	2 lbs.
Lanolin.....	5 lbs. 8 oz.
Petrolatum.....	38 lbs.
Perfume.....	Q. S.
Beeswax.....	2 lbs. 4 oz.

PAR. 6. None of the respondent's products, Dermolav Liquid and Dermolav Compound, together known as Dermolav Method and Dermolav Scalpfood, or any of the ingredients in respondent's products, as shown by formulae in paragraph 5 *supra*, either singly or in combination, are beneficial in removing the causes of baldness and are in no wise a scalp food. They do not involve or embrace any new scientific methods in the treatment of baldness and other conditions of the scalp, and they will not grow hair or revive or bring to life so-called dormant hair roots. Further, respondent's products will not cure alopecia areata and are not harmless preparations for removing the congested skin from the scalp.

Respondent's products are sold to individuals for self-medication. People who are hypersensitive to the elements in respondent's products find that the use of the products causes a rash.

The use by respondent of the representations and claims herein set out has had and now has the capacity and tendency to, and does, mislead and deceive a substantial part of the purchasing public into the

false and erroneous belief that said representations and claims are true, and that the respondent's products, Dermolav Liquid and Dermolav Scalpfood, will prevent falling hair, will cure baldness and alopecia areata, revive so-called dormant hair roots, and are harmless, new and scientific preparations.

Acting under the above mistaken and erroneous beliefs induced by the false and deceptive statements and representations made by respondent as herein set out, the public has purchased a substantial volume of respondent's products. As a result, trade in interstate commerce has been unfairly diverted to respondent from its competitors likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of treatments intended to be used and used for the treatment of the condition of falling hair and baldness, and for other afflictions of the scalp, who truthfully represent the nature and the curative value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Dermolav Laboratories, Inc., are 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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, Dermolav Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of preparations recommended and sold for the treatment of conditions of the scalp and now designated as Dermolav Liquid, Dermolav Compound, Dermolav Method, and Dermolav Scalpfood, or under any other

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name, do forthwith cease and desist from directly or indirectly representing:

1. That respondent's said products will cure baldness;
2. That respondent's said products will stop or prevent falling hair;
3. That respondent's said products will cure alopecia areata;
4. That respondent's said products are harmless;
5. That respondent's said products will revive so-called dormant hair roots;
6. That respondent's said products constitute a new method for treating afflictions and conditions of the scalp;
7. That respondent's products are scientific.

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

Syllabus

IN THE MATTER OF

LORD & TAYLOR, BIBERMAN BROS., INC., AND GALEY
& LORD, INC.,COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3141. Complaint, July 21, 1937¹—Decision, Mar. 11, 1938*

Where three corporations, respectively engaged as retailer of coats, dresses, robes, and other items of wearing apparel, manufacturer of dresses for sale and distribution to department and retail stores, and commission house converter and seller of fabrics to the cutting trade; in cooperatively advertising, in newspapers and leaflets, dresses made by aforesaid corporate manufacturer, of said converter's fabrics, of material other than silk, product of cocoon of the silk worm—

- (a) Made use of such words as "Crepe," "Seal Crepe," "silky," and "Pure Dye," through such statements in newspaper advertising as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *", and substantially similarly used said words in leaflets describing said garments, and tagged said dresses for offer and sale by said corporate retailer as " * * * made from SEAL CREPE, Fast Color, Pure Dye * * * American ENKA," and on reverse side advised reader or customer that "For best results on SEAL CREPE we recommend dry cleaning"; and

Where said corporate retailer, in newspaper advertising soliciting sale of certain pajama robes and dresses, some of which were composed wholly of other and different materials than silk, product of cocoon of the silk worm—

- (b) Described same, respectively, as "Silk Robes—Rich Brocades, all silk-lined. * * * Silk Facings and Trims in All robes," and as "Satin";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said various garments were made from silk, product of the cocoon of the silk worm, and unfairly to divert trade to said corporations from their competitors engaged in sale of dresses, etc., and who accurately describe and brand their said products by terms properly descriptive of fabric content thereof, notwithstanding absence of intent to mislead and deceive in such mistaken designation of said robes and use of other terms as accurately and truthfully describing materials from which garments were made; to substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg and *Mr. George W. Williams* for the Commission.

Gould & Wilkie, of New York City, for Lord & Taylor.

Mr. Erwin Feldman, of New York City, for Biberman Bros., Inc.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Galey & Lord, Inc.

¹Amended.