

IN THE MATTER OF
LAVOPTIK COMPANY, INC.

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

Docket 3188. Complaint, July 24, 1937—Decision, Apr. 21, 1938¹

Where a corporation engaged in sale and distribution of its "Lavoptik" preparation, to consumers in other States, in competition with others engaged in offer and sale in like commerce of similar preparations and preparations used for same and similar purposes; in advertising its said products,—

- (a) Made such representations and statements as that "6,000 eyesight specialists endorse it", and that it is "Advised by 6,000 eyesight specialists"; and
- (b) Made such statements and representations, among others, as that "A daily eye bath" with it "will be a constant protection to your eyes from the incessant strain that modern living places upon them," and that it "will bring eye strength," and that it "heals";

Notwithstanding fact said preparation, composed of a boric base combined in distilled water with camphor, sodium chloride and hydrastine hydrochloride, was not a cure for diseases of the eye or impaired vision;

With capacity to mislead members of the purchasing public into the mistaken and erroneous beliefs that "eyesight specialists" meant graduate medical doctors who specialized in treatment of the diseases and ailments of the eye, and that "a daily eye bath" with said preparation, as above set forth, would prevent eye strain, and that it would make weak eyes strong and would cure or remedy permanently diseases of the eyes and impaired vision, to the prejudice of the public and competitors, and with capacity and tendency unfairly to divert to it trade of latter, engaged in selling in interstate commerce preparations truthfully advertised and represented and used for same purposes for which it recommended its said product: to their substantial injury 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. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Sanborn, Graves, Appel, Andre & Morton, of St. Paul, Minn., 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 Lavoptik Company, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in com-

¹ See, for original findings and order, 25 F. T. C. 1380.

merce as "commerce" is defined in said act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lavoptik Company, Inc., is a corporation organized and existing under the laws of the State of Minnesota. Respondent's plant, office, and principal place of business is located at Michigan Avenue and Seventh Street, St. Paul, Minn. Said respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing or compounding, advertising, selling, and distributing a lotion, or eye wash, commonly known and designated as "Lavoptik Eye Wash." It now causes, and for more than 1 year last past has caused, said preparation, when sold, to be shipped from its place of business in St. Paul, Minn., to purchasers thereof, some located in the State of Minnesota, others located in various other States of the United States and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of eye lotions and eye washes, and other preparations similar to that sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, in soliciting the sale of and selling its product, designated as "Lavoptik Eye Wash," respondent now represents, and for more than 1 year last past has represented, in newspapers, magazines, pamphlets, circulars, letters, wrappers, radio broadcasts, and other forms of advertising media having an interstate circulation, and in a booklet entitled "How to Safeguard Your Eyes," which it issues, ships and distributes in large number to the public generally throughout the various States of the United States and in the District of Columbia, through its distributors, sales branches, and sales people, as follows:

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

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

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

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

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle

Complaint

26 F. T. C.

of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four Important Suggestions:

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

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

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

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

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

PAR. 4. The representations of respondent as aforesaid are false and grossly exaggerated and have had and do have a capacity to confuse, mislead, and deceive members of the purchasing public into the mistaken and erroneous belief that respondent's product, designated "Lavoptik," is different from other eye lotions or eye washes, and that the preparation has been endorsed by 6,000 graduate medical doctors, especially trained in the treatment of the eyes; that said preparation has the property to heal and rejuvenate strained and impaired eyesight, and is an effective treatment for all forms of defective eyesight, no matter from what cause. The said representations of respondent have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of erroneous beliefs engendered as above set forth, and to divert trade unfairly from competitors of respondent engaged in the sale of eye lotions and eye washes similar to the preparation sold by respondent in commerce in and among the various States of the United States, and deceives the public and injures competitors, and places in the hands of others the means whereby the public are deceived, and competitors are injured. There are

among competitors of respondent many who sell and distribute in commerce similar lotions and eye washes and preparations for the treatment of the eyes, who do not misrepresent the properties, the qualities, or the therapeutic virtues, functions, or effects of their *said competing products*.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 24th day of July 1937, issued, and on the 26th day of July 1937, served its complaint in this proceeding upon said respondent, Lavoptik Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. On August 11, 1937, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a *statement of facts, signed and executed by the respondent by its counsel, Monte Appel, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:*

FINDINGS AS TO THE FACTS

PARAGRAPH 1. *Lavoptik Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business*

located at Michigan Avenue and Seventh Street, St. Paul, Minn. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation designated "Lavoptik."

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

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

PAR. 3. The preparation "Lavoptik" is composed of a boric base, combined in distilled water with camphor, sodium chloride, and hydrastine hydrochloride, and is not a cure for diseases of the eye or impaired vision.

PAR. 4. In the course and conduct of its business, as hereinbefore described, the respondent made, published, or caused to be published the following statements, claims, and representations to induce the purchase of its product:

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

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

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

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

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

Four Important Suggestions:

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

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

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

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

The representations of respondent set out above that "6,000 eyesight specialists endorse it" and that it is "advised by 6,000 eyesight specialists," have the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that "eyesight specialists" means graduate medical doctors who specialize in the treatment of diseases and ailments of the eye.

The representation of respondent, set out above, that "a daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them," has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that a daily eye bath with Lavoptik will prevent eye strain.

The representation of respondent, set out above, that "Lavoptik will bring eye strength," has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that Lavoptik will make weak eyes strong.

The representation of respondent, set out above, that Lavoptik "heals" has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that Lavoptik will cure or permanently remedy diseases of the eyes and impaired vision.

PAR. 5. The representations of respondent, set out above, that "6,000 eyesight specialists endorse it," that it is "advised by 6,000 eyesight specialists," and that "a daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them." that "Lavoptik will bring eye strength," that Lavoptik "heals" are to the prejudice and injury of the public and of respondent's competitors. The practice, on the part of the respondent of using these representations has had, and has, the capacity and tendency unfairly to divert to respondent the trade of competitors engaged in selling in interstate commerce preparations which are truthfully advertised and represented and which are used for the same purposes for which the respondent recommends its product. Thereby substantial injury has been done, and is being done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Lavoptik Company, Inc., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in com-

merce 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Lavoptik Company, Inc., and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Lavoptik Company, Inc., its officers, representatives and employees, in connection with the sale or offering for sale by it in interstate commerce or in the District of Columbia of a preparation now designated as Lavoptik or any other preparation of substantially similar ingredients or effect, whether designated by that name or some other name, forthwith cease and desist from:

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

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

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

Complaint

IN THE MATTER OF

GUS STEPHENS, TRADING AS TESTED SPECIALTIES
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3220. Complaint, Aug. 28, 1937—Decision, Apr. 21, 1938

Where an individual engaged in sale and distribution of product "ON-THE-NOSE" for dogs, cats, and other animals, in competition with others similarly engaged, and who do not misrepresent the efficacy of their products, nor their business status; in widely advertising same in periodicals of general circulation throughout the United States, and in printed folders, literature, circular letters and other advertising matter circulated among customers and prospective customers—

- (a) Represented that said product, name of which it featured, was an effective treatment or competent and adequate remedy or cure for distemper, coughs or colds, in dogs or other animals, and that it was effective in curing or preventing diseases or ailments from which they suffered, and constituted a vermifuge, facts being it was not effective in any respect for said last-named purpose or for other purposes for which offered, as above set forth, and was nothing more than a mild laxative which would not be effective even as such unless given in dose larger than prescribed; and
- (b) Set forth on letterheads used by it "Originators and manufacturers of 'ON-THE-NOSE'," facts being it did not maintain and never had maintained a laboratory or laboratories, either in Canada or the United States, where said preparation was made or compounded;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true and that said preparation was efficacious as a remedy or cure, as hereinabove represented, and into purchase of a substantial quantity of his said product on account of such belief, thus induced, and with result that trade thereby was unfairly diverted to him from others engaged in sale and distribution of products for same purposes, for which, substantially, that of said individual was advertised and sold, and who truthfully advertise their respective products and efficacy thereof:

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. Floyd O. Collins 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 Gus