

IN THE MATTER OF
NELLE K. WING, TRADING AS THE DEPEW CHEMICAL
COMPANY

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

Docket 3350. Complaint, Mar. 4, 1938—Decision, Apr. 25, 1938

Where an individual engaged in distribution and sale of certain preparations for the eye, under designation "Sano-See A" and "Sano-See B," or "Doctor DePew's Famous Eye Prescription"; in advertising same in newspapers, periodicals, and trade journals of general circulation throughout the United States, and through printed matter, advertising folders, letters, and literature circulated to customers and prospective customers throughout the several States—

(a) Represented that said preparations would preserve or improve eyesight and keep the eyes in a clean or healthy condition, and that they might be safely used by everyone, through such statements as "* * * promotes the circulation of the blood," "* * * an eye treatment and should not be compared with eye washes," "* * * occasional use * * * will keep the eyes in a clean, healthy condition," etc., "Every member of the family may safely use," etc., "The best known home treatment for almost all eye complaints"; and

(b) Represented that said preparations were remedies or competent and effective treatments for or would cure or promote the cure of ulcer of the cornea, trachoma, dimmed vision, spots before the eyes, and a number of others;

Facts being that the two products involved, long known to science in the treatment of mild cases of inflammation of the eye, when not caused by or associated with any systemic or diseased condition, would not improve or preserve eyesight and were not beneficial in treatment of all or any of the diseases, ailments, afflictions, and conditions named, but might actually aggravate same and cause permanent injury, and through their tendency to improve, temporarily, inflamed appearance without actually affecting causes thereof, bring about dangerous delay in the prompt consultation of an oculist for treatment of a serious disease;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that said representations were true, and that said products would in truth accomplish results claimed, and with effect of thereby inducing a number of the purchasing public to buy substantial volume of said products, and of unfairly diverting trade from competitors, many of whom manufacture, distribute, and sell various products designed, intended, and sold to cure, relieve, or treat various diseases, ailments, etc., of the human eye, as hereinabove set forth, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used;

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

Mr. Gerard A. Rault for the Commission.

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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 Nelle K. Wing, trading and doing business as The DePew Chemical Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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. Respondent, Nelle K. Wing, is an individual doing business under the trade name of The DePew Chemical Company. Respondent's principal place of business is located at 2417 Linwood Boulevard, Kansas City, Mo. Respondent is now, and has been for several years last past, engaged in the business of distributing and selling in commerce, as herein later set out, certain medical products designated as "Sano-See A" and "Sano-See B," or "Dr. DePew's Famous Eye Prescription."

PAR. 2. Said respondent being engaged in business as aforesaid causes said medical products when sold to be transported from her office and principal place of business in the State of Missouri to purchasers thereof located at various points in States of the United States other than the State of Missouri and in the District of Columbia. There is now and has been at all times mentioned herein a course of trade in commerce in said products so prepared, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her said business, the respondent is now, and has been, in substantial competition with other individuals and with corporations and firms likewise engaged in the business of manufacturing, distributing, and selling eye medicines and eye washes or other similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has caused advertising to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States,

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through the use of the United States mails and otherwise, advertising folders, letters and literature. In all said advertisements and advertising literature the respondent has made such statements as the following:

Sano-See promotes the circulation of the blood. It helps scavengers carry away the destroyed cells and other foreign matter; it helps the builders repair the structure; it brings the warriors into action to ward off or drive out disease.

If you suffer from dim or blurred vision, granulated or inflamed lids, spots, scums, smarting, burning, or watering—just your name and address will bring you, all charges prepaid, a \$1.00 treatment of Dr. DePew's Famous Eye Prescription. No matter how long you have suffered * * * try this treatment without risk.

Your eye sight, it's preservation and improvement through the use of Sano-See.

Sano-See is an eye treatment and should not be compared with eye washes * * *

The occasional use of Sano-See will keep the eyes in a clean, healthy condition and help them to retain their natural strength and sparkle.

Every member of the family may safely use Sano-See. The best known home treatment for almost all eye complaints.

It simply assists nature by stimulation of the blood supply and by its soothing, healing and eliminating properties of overcoming the conditions that are the cause of so large a proportion of eye troubles * * * It helps overcome these conditions and to eliminate from the eye the conditions that cause them.

All of said statements, together with many similar statements, appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human eye. In all of her advertising literature respondent represents, through statements and representations hereinabove set out and other statements of similar import, nature, and effect that her various products, to wit: Sano-See A and Sano-See B, or Dr. DePew's Famous Eye Prescription, will prevent and cure, or are beneficial in the treatment of many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human eye.

Respondent further advertises that her products above referred to will preserve and improve eyesight; that the use of Sano-See will keep the eyes in a clean, healthy condition, and help them retain their natural strength and sparkle.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature as diseases, ailments, afflictions, and conditions which the use of said above-named products will prevent and cure, or are beneficial in the treatment of, are the following: Ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eye-

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lids, spots before the eyes, and smarting, burning, or watering of the eyes.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's products will not improve or preserve eyesight, nor are they beneficial in the treatment of all or any, of the diseases, ailments, afflictions, and conditions hereinabove named. On the contrary, these products may actually aggravate some of the diseases hereinbefore named, and cause permanent injury to the eyes. In addition, these products may have a tendency to improve temporarily an inflamed appearance of the eye without actually affecting the causes of said inflammation and thus cause dangerous delay in the proper consultation of an oculist for the treatment of a serious disease. Both of respondent's products are simple remedies, long known to science in the treatment of mild cases of inflammation of the eyelids. Sano-See A is a solution of zinc sulphate in water, and Sano-See B is a solution in water of boric acid, adrenalin solution, and glycerine.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of curing, relieving, or treating the various diseases, ailments, afflictions, and conditions of the human eye hereinbefore named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human eye hereinabove named, in offering for sale and selling her products were and are calculated to, and have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will in truth accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof. As a result thereof 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. 8. The above and foregoing acts, practices, and representations of the respondent have been and are to the prejudice of the public and respondent's competitors as aforesaid and constitute unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 4th day of March 1938, issued and served its complaint in this proceeding upon respondent, Nelle K. Wing, trading as The DePew Chemical Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 1, 1938, the respondent filed her answer, in which answer she admitted all the material allegations of the complaint to be true and stated that she waived hearing on the charges set forth in the said complaint and that without further evidence or other intervening procedure, the Commission might issue and serve upon her 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 matter, 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, Nelle K. Wing, is an individual doing business under the trade name of The DePew Chemical Company. Respondent's principal place of business is located at 2417 Linwood Boulevard, Kansas City, Mo. Respondent has been, for several years last past, engaged in the business of distributing and selling in commerce, as herein later set out, certain medical products designated as "Sano-See A" and "Sano-See B," or "Dr. DePew's Famous Eye Prescription."

PAR. 2. Said respondent being engaged in business as aforesaid causes said medical products when sold to be transported from her office and principal place of business in the State of Missouri to purchasers thereof located at various points in States of the United States

other than the State of Missouri and in the District of Columbia. There has been at all times mentioned herein a course of trade in commerce in said products so prepared, distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her said business, the respondent has been in substantial competition with other individuals and with corporations and firms likewise engaged in the business of manufacturing, distributing and selling eye medicines and eye washes or other similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has caused advertising to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States, through the use of the United States mails and otherwise, advertising folders, letters, and literature. In all said advertisements and advertising literature the respondent has made such statements as the following:

Sano-See promotes the circulation of the blood. It helps scavengers carry away the destroyed cells and other foreign matter; it helps the builders repair the structure; it brings the warriors into action to ward off or drive out disease.

If you suffer from dim or blurred vision, granulated or inflamed lids, spots, scums, smarting, burning or watering—just your name and address will bring you, all charges prepaid, a \$1.00 treatment of Dr. DePew's Famous Eye Prescription. No matter how long you have suffered * * * try this treatment without risk.

Your eye sight, it's preservation and improvement through the use of Sano-See.

Sano-See is an eye treatment and should not be compared with eye washes * * *

The occasional use of Sano-See will keep the eyes in a clean, healthy condition and help them to retain their natural strength and sparkle.

Every member of the family may safely use Sano-See. The best known home treatment for almost all eye complaints.

It simply assists nature by stimulation of the blood supply and by its soothing, healing and eliminating properties of overcoming the conditions that are the cause of so large a proportion of eye troubles * * * It helps overcome these conditions and to eliminate from the eye the conditions that cause them.

All of said statements, together with many similar statements, appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human eye. In all of her advertising literature respondent represents, through statements and representations here-

inabove set out and other statements of similar import, nature, and effect that her various products, to wit, Sano-See A and Sano-See B, or Dr. DePew's Famous Eye Prescription, will prevent and cure, or are beneficial in the treatment of many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human eye.

Respondent further advertises that her products above referred to will preserve and improve eyesight; that the use of Sano-See will keep the eyes in a clean, healthy condition, and help them retain their natural strength and sparkle.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature as diseases, ailments, afflictions, and conditions which the use of said above named products will prevent and cure, or are beneficial in the treatment of, are the following: Ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eyelids, spots before the eyes, and smarting, burning, or watering of the eyes.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's products will not improve or preserve eyesight, nor are they beneficial in the treatment of all or any, of the diseases, ailments, afflictions, and conditions hereinabove named. On the contrary, these products may actually aggravate some of the diseases hereinabove named, and cause permanent injury to the eyes. In addition, these products may have a tendency to improve temporarily an inflamed appearance of the eye without actually affecting the causes of said inflammation and thus cause dangerous delay in the proper consultation of an oculist for the treatment of a serious disease. Both of respondent's products are simple remedies, long known to science in the treatment of mild cases of inflammation of the eye, when such inflammation is not caused by or associated with any systemic or diseased condition. Sano-See A is a solution of Zinc Sulphate in water, and Sano-See B is a solution in water of Boric Acid, Adrenalin solution, and Glycerine.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of curing, relieving, or treating the various diseases, ailments, afflictions, and conditions of the human eye hereinbefore named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

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PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human eye hereinabove named, in offering for sale and selling her products were and are calculated to, and have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will in truth accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof.

CONCLUSION

The aforesaid acts and practices of the respondent Nelle K. Wing, trading as The DePew Chemical Company, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that she waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon her findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, 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, Nelle K. Wing, an individual, trading as The DePew Chemical Company, or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a preparation for use in the eyes, now designated as "Sano-See A," "Sano-See B," or "Doctor DePew's Famous Eye Prescription," or any other preparation containing substantially similar ingredients or possessing substantially

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similar properties, whether sold under these names or any other names in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by inference:

1. That said preparations will preserve or improve eyesight; that said preparations will keep the eyes in a clean or healthy condition; that said preparations may be safely used by everyone.

2. That said preparations are remedies or competent and effective treatments for or will cure or promote the cure of ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eyelids, spots before the eyes, and smarting, burning, watering of the eyes, or any other disease of the eye, except that respondent is not hereby prohibited from representing that these preparations may be used to temporarily relieve mild inflammation of the eye when such inflammation is not caused by or associated with any systemic or diseased condition.

It is further ordered, That the respondent shall, within 30 days after service upon her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

Syllabus

IN THE MATTER OF

RALPH C. CURTISS, ALIAS C. A. DAVIS, TRADING AS
CHEMICAL PRODUCTS, MNFRS., AND MORRIS E. NEW-
MAN, TRADING AS AUTOMOTIVE TEST LABORA-
TORIES OF AMERICA.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3329. Complaint, Feb. 9, 1938—Decision, Apr. 28, 1938*

Where an individual engaged in the manufacture, sale, and distribution of two chemical automotive compounds, under designations "Hytense" and "Hypower," purportedly as gasoline power intensifier and saver, and as motor compression seal; in soliciting sale of said products through pamphlets and advertisements in newspapers and periodicals, and through descriptive circulars—

- (a) Represented that said "Hytense" was a gasoline saver and that it reduced motor knock, increased combustion and mileage, removed and prevented carbon, and lubricated the upper cylinders, and did not contain anything harmful to the motor, and would not form sediment, and included in advertising thereof facsimile of a so-called "Certificate of Merit" covering product in question, and set forth possible earnings of agents in sale thereof as "up to 400 percent profit"; and
- (b) Represented that said "Hypower" saved or rebuilt the motor, lasted 5,000 to 10,000 miles, sealed the rings, increased compression, reduced oil pumping, and saved oil and gasoline and rebuilt worn or scored cylinder walls and pistons, and reduced friction and wear, and likewise referred, in support of said representations, to said so-called "Certificate of Merit";

Facts being claims for aforesaid respective products were false in that they did not accomplish said various results, and possible earnings of agents as above set forth were fictitious and greatly exaggerated; and

Where an individual engaged, under trade-name Automotive Test Laboratories of America, in business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products for their use in advertising same in interstate commerce, and in representing to said manufacturers generally that aforesaid "Laboratories" constituted a nationally recognized institution engaged in testing various products submitted to it by its customers; in pursuance of a conspiracy, entered into with said vendor of such "Hytense" and "Hypower" products—

- (c) Prepared and issued to said vendor so-called "Certificates of Merit" and "Seals of Approval" covering his aforesaid products, and setting forth, in substance and broadly, the gist of the claims made therefor by him and that said products had been tested in such laboratories;

Facts being giver of said certificates or seals of approval did not operate a laboratory for purpose of making tests of manufactured articles, and did not and had not made such tests, and said certificates were false and misleading in all essential respects, in that they were not result of scientific, independent, and impartial tests by competent persons, but were prepared