

IN THE MATTER OF
COLONIAL DAMES, INC., AND COLONIAL DAMES
COMPANY, LTD.

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

Docket 3104. Complaint, June 7, 1937¹—Decision, May 16, 1938

Where two corporations engaged in manufacture and sale and sale and distribution, from Hollywood, of a certain line of preparations for use in the care, treatment, and beautification of the skin—

- (a) Included words "Colonial Dames" in their respective corporate names and made use thereof in listing, identifying and describing their said businesses, and in trade names of said various preparations and made use thereof in identifying and describing their various preparations in advertisements in newspapers, pamphlets, radio broadcasts, etc., and as a trade name on the packages and containers in which sold, and referred to the "Head," "Chief Chemist," or "Famous Beauty Consultant" of their "Colonial Dames Laboratories," in connection with sale of their said products, and more particularly in connection with radio advertising thereof, and in conveying to prospective purchasers among the consuming public various messages, creeds, and representations;

Notwithstanding fact their said preparations were not produced, approved, sponsored or recommended by, or in any manner connected with or related to, any of several patriotic, historical and social organizations with national or more or less wide-spread ramifications and chapters, and history and membership running back for many years, and so named or identified, and none of which had ever engaged in manufacture or sale of cosmetics or any other preparation or product of commerce;

With effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that said preparations were produced, approved, sponsored, endorsed, or recommended by one or more of such societies; and

- (b) Represented in advertising their said products in newspapers, circulated in various parts of the United States and through pamphlets, etc., and radio broadcasts, that the "Beauty Wash," included in their aforesaid line and sold under said trade name, would have an instant beautifying effect on the skin, and that it worked like magic in banishing stubborn blackheads, etc., and, while not a chemical bleach, would gently bleach the skin with whitening action derived from the natural elements from which made;

Facts being it did not have said effects or tone fallow skins and effect was merely to cleanse and not to bleach, and it was not the answer to stubborn blackheads, etc.;

- (c) Represented, as aforesaid, that the "Massage Cream," included in its said line and sold under aforesaid designation, was a superlative tissue cream and quickly banished, by reason of almond oil content, all traces of dryness and sluggishness, increased circulation of fresh, pure blood, etc.,

¹ Amended.

1260

Complaint

and thereby rebuilt and youthified from within and thus worked with nature instead of against it, etc.;

Facts being chief benefits derived from use of said preparation were due to massage rather than to action of its ingredients, and it did not banish all traces of dryness, increase circulation, rebuild, or youthify from within, etc.; and

(d) Represented that its "Beautifier" remained always on the surface and prevented pore clogging and actually builded beauty into the skin, and that its said "Beauty Aids" acted on a different principle from most cosmetics, through working according to accepted laws of nature instead of attempting the impossible feat of rubbing in youth and beauty;

Facts being preparation in question was beneficial chiefly as a powder base and did not prevent pore clogging nor "actually build beauty into the skin," nor act on a different principle as above claimed;

With effect of misleading a substantial portion of purchasing public and causing prospective purchasers to believe that said false and misleading representations were true and that said preparation had the efficacy and usefulness in the care, treatment, and beautification of the skin represented and implied by them, and of causing a substantial portion of purchasing public to buy their said preparations in aforesaid erroneous beliefs, and of thereby unlawfully and unfairly diverting trade to them from competitors engaged in sale of preparations recommended for use in connection with care, treatment and beautification of the skin, and truthfully and accurately represented:

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

Mr. Marshall Morgan for the Commission.

Alvord & Alvord, of Washington, D. C., for respondents.

AMENDED 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 Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Colonial Dames, Inc., is a corporation organized under the laws of the State of Delaware, but having its principal office and place of business located at 4652 Hollywood Boulevard, Hollywood, Calif. Colonial Dames Company, Ltd., is a corporation organized and doing business under the laws of the State of California, with its principal office and place of business also located at

Complaint

26 F. T. C.

4652 Hollywood Boulevard, Hollywood, Calif. Said companies, located at the same Hollywood address, as above stated, are owned and controlled by the same parties in interest, who direct the activities and control the policies of each. Said Colonial Dames, Inc., and Colonial Dames Company, Ltd., hereinafter referred to as respondents, are now, and for several years last past have been engaged in the manufacture, in their laboratory, and in the sale and distribution of certain preparations for use in the care, treatment and beautification of the skin, and cause said preparations, when sold, to be transported from their said place of business in the city of Hollywood, State of California, into and across the several States of the United States and the District of Columbia, to the purchasers thereof located at various points in said several States other than the State of California, and in the District of Columbia.

In the course and conduct of their business as aforesaid, the respondents are and have been in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with other corporations, and with associations, partnerships and individuals engaged in said commerce in the sale and distribution of preparations for the care, treatment and beautification of the skin. Among the competitors of the respondents in said commerce are many who truthfully represent the efficacy and usefulness of their products when used in the care, treatment and beautification of the skin and who do not engage in the acts, practices and methods used and employed by the respondents as herein-after alleged.

PAR. 2. In the course and conduct of the business of respondents, the words "Colonial Dames" appear as a part of the corporate name of each company and are uniformly employed and used by respondents in advertising in newspapers, pamphlets, booklets, circulars, and in radio broadcasts as a trade name to indicate and identify the business conducted by respondents, and in describing the qualities and characteristics of their said preparations, and as a trade-mark on packages and containers to brand and identify the goods sold by them.

The business place of respondents located at 4652 Hollywood Boulevard, Hollywood, Calif., as aforesaid, is listed in the telephone directory as "Colonial Dames Corporation," and in connection therewith a local establishment for the sale of respondents' cosmetic products, designated as "Colonial Dames Charm Shop," is operated at the same address. The "corporation" and the "Charm Shop," located at the same address, as aforesaid, are listed under the same telephone number. Cosmetic products of the respondents are labeled as sold by "Colonial Dames Co." and the words "Colonial Dames" coupled

with a design depicting two dancing figures in colonial costume appear as a trade mark on products sold by respondents in commerce.

PAR. 3. Respondents in the course and conduct of their business in said commerce, as aforesaid, refer to their preparations generally as Colonial Dames Beauty Aids, and sell, among others, preparations designated as Colonial Dames Beauty Wash, Colonial Dames Massage Cream, and Colonial Dames Beautifier, and advertise said products in newspapers circulated in various parts of the United States, through pamphlets, booklets and circulars distributed among prospective purchasers in various parts of the United States and through radio broadcasts, in all of which they make and cause to be made many statements concerning the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin.

Among the statements so made, distributed and circulated and typical of those used by the respondents in offering for sale and selling their said preparations in said commerce are the following:

Colonial Dames "Beauty Wash." Frankly, it is a luxury—but luxury or not, you will delight in its instant beautifying effect on your skin. It works magic in banishing stubborn blackheads, toning sallow skins, whitening and refining texture. Leaves the skin immaculately clean and just like velvet!

While Colonial Dames Beauty Wash does gently bleach the skin, please remember that it is NOT a chemical bleach. Its gentle whitening action is derived solely from the natural elements from which it is made.

Beauty Wash provides the answer to stubborn blackheads, sallow and discolored skin problems! * * * just try it, and see how quickly pores yield all clogging impurities * * * Almond meal and buttermilk were beauty standbys in our grandmother's day. They are combined with science's latest innovations to form this dainty, effective beauty aid.

They find that a five-minute nightly facial with Colonial Dames Massage Cream quickly banishes all traces of dryness or sluggishness, leaving the skin freshly stimulated and vibrant. Made with almond oil, it is * * * a superlative tissue cream.

Colonial Dames Massage Cream and other exquisite Colonial Dames preparations occupy the spotlight of favor in film circles.

Colonial Dames Massage Cream lubricates, softens and increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, thereby rebuilding and youthifying from WITHIN * * * Thus, you may be sure of a fresh, youthful skin by working WITH nature, instead of AGAINST.

Colonial Dames Massage Cream, for instance, is used nightly as cleanser and tissue cream. A definite improvement in skin texture is apparent even after a few applications.

Colonial Dames Massage Cream cleanses far more thoroughly than most of the so-called cleansing creams, because it is made with almond oil, and as a tissue cream, it works perfectly with Nature to rejuvenate the inner tissues. Applied according to the ritual of beauty, it is more than a skin food—more than a cleanser—it is TRUE SKIN REJUVENATOR.

It is the purpose of Colonial Dames Massage Cream and the nightly facial treatment to reestablish normal circulation so that EVERY tiny cell is adequately nourished.

Complaint

26 F. T. C.

Colonial Dames Massage Cream is *more* than a cleanser—it is a TISSUE CREAM as well.

Colonial Dames Massage Cream drives directly to the cause of all beauty imperfections and rids the skin of those enemies. The results are direct and immediate.

COLONIAL DAMES MASSAGE CREAM reactivates the tissues from WITHIN, stimulates cell structure, restores lubricating oils, exercises the muscles and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities the natural way.

COLONIAL DAMES MASSAGE CREAM CORRECTS AND PREVENTS faulty skin texture by REMOVING THE CAUSE! Physicians prescribe this fine cream as a super-cleanser for the correction of stubborn blemishes! * * * COLONIAL DAMES MASSAGE CREAM is a cosmetic NECESSITY.

It (Colonial Dames Massage Cream) is a *complete, normalizing* treatment—and complexion blemishes, which are abnormal, quickly disappear.

Also, because Colonial Dames Beautifier remains always on the *surface*, it *prevents* pore clogging.

Colonial Dames Beautifier actually builds beauty *into* the skin.

Colonial Dames Beauty Aids *today* combine these same fine ingredients, unspoiled by modern byproducts or commercialism.

Effective because they act on a different principle from most cosmetics. Instead of attempting the impossible feat of “rubbing in youth and beauty” entirely from the outside, Colonial Dames Beauty Aids work according to the accepted laws of nature.

In further connection with the sale of their said products, respondents, particularly in connection with radio advertising, convey to prospective purchasers among the consuming public various messages, creeds and representations from the “head,” “chief chemist” or “famous beauty consultant” of the “Colonial Dames Laboratories.”

PAR. 4. Respondents, in the course and conduct of their business in said commerce, and by the means and in the manner aforesaid, represent and imply that their said preparation “Colonial Dames Beauty Wash” when used as directed has an instant beautifying effect on the skin; that “it works like magic” in banishing stubborn blackheads, toning sallow skins, and in whitening the skin and refining its texture; that it is a competent and effective corrective or treatment in eliminating stubborn blackheads and restoring the natural color to sallow and discolored skins, and in removing quickly all clogging impurities from the pores of the skin.

In truth and in fact, the preparation “Colonial Dames Beauty Wash,” when used as directed by the respondents or otherwise, does not have an instant beautifying effect on the skin; it does not work like magic or otherwise in banishing stubborn blackheads, toning sallow skins and in whitening the skin and refining its texture; it is not a competent and effective corrective or treatment in eliminating stubborn blackheads, restoring natural color to sallow and discolored

skins and in removing quickly all clogged impurities from the pores of the skin.

PAR. 5. Respondents, in the course and conduct of their business in said commerce, and by means and in the manner aforesaid, represent and imply that their said preparation "Colonial Dames Massage Cream," when used as directed, will quickly banish all traces of dryness and sluggishness and leave the skin freshly stimulated and vibrant; that it increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, rebuilding and youthifying from within; that it will reestablish normal circulation so that every tiny cell is adequately nourished; that it drives directly to the cause of all beauty imperfections and rids the skin of those "enemies," producing direct and immediate results; that it corrects and prevents faulty skin texture by removing the cause; that it is a complete, normalizing treatment and causes complexion blemishes quickly to disappear; that it is a tissue cream and rejuvenates the inner tissues and is a true skin rejuvenator; that it stimulates cell structure, reactivates tissues from within, and brings a surge of rich red blood to supply needed nourishment; that it is a super cleanser for the correction of stubborn blemishes of the skin; purges out toxic impurities in a natural way, and is a cosmetic necessity; that it is composed in part of almond oil and that almond oil is superior to other vegetable oils for use in a massage cream, and that because of its almond oil content said preparation is superior to most massage creams.

In truth and in fact, the preparation "Colonial Dames Massage Cream," when used as directed by the respondents or otherwise, will not quickly banish all traces of dryness and sluggishness and leave the skin freshly stimulated and vibrant; it will not increase the circulation of fresh pure blood to every tiniest cell and tissue of the skin and rebuild and youthify from within; it will not reestablish normal circulation so that every tiny cell is adequately nourished; it does not drive directly to the cause of all beauty imperfections and rid the skin of those "enemies" and does not produce direct and immediate results; it does not correct and prevent faulty skin texture by removing the cause thereof; it does not cause complexion blemishes quickly to disappear; it is not a tissue cream and does not rejuvenate the inner tissues and it is not a true skin rejuvenator; it does not stimulate cell structure, reactivate tissues from within or bring a surge of rich red blood to supply needed nourishment; it is not a super cleanser for the correction of stubborn blemishes of the skin; it does not purge out toxic impurities in a natural way nor is it a cosmetic necessity; almond oil constitutes only a small portion of the total oils used in said preparation and it is not a superior oil for use

in such creams nor does it render said preparation superior to most massage creams.

PAR. 6. Respondents in the course and conduct of their business in said commerce, and by the means and in the manner aforesaid, represent and imply that their said preparation "Colonial Dames Beautifier," when used as directed, remains always on the surface of the skin and thereby prevents the pores of the skin from becoming clogged, and that it actually builds beauty into the skin. Respondents represent and imply that their other preparations, referred to as "Colonial Dames Beauty Aids," contain the same fine ingredients found in said beauty wash, massage cream, and beautifier, and that they act on a principle different from most cosmetics, and work according to the accepted laws of nature.

In truth and in fact, said preparation "Colonial Dames Beautifier," when used as directed by the respondents or otherwise, does not remain always on the surface of the skin, does not prevent the pores of the skin from becoming clogged and does not actually build beauty into the skin; nor do said "Colonial Dames Beauty Aids" act on a principle different from most cosmetics, nor do they work according to the accepted laws of nature,

PAR. 7. On or about April 8, 1891, there was organized in the city of Philadelphia, Pa., a patriotic, educational and historical society under the name "The Pennsylvania Society of the Colonial Dames of America". This society was formed for the purposes, among others, of collecting and preserving manuscripts, relics, etc., of colonial days, the restoration and preservation of historical buildings, the collection and diffusion of information concerning the colonies and colonial days, the stimulation of patriotism, and to secure the organization of similar societies with like purposes and aims in the several States of the United States.

Since the organization of the Pennsylvania Society of the Colonial Dames of America, as aforesaid, similar societies with the same purposes and aims have been organized in, and incorporated under the laws of several of the States of the United States and the District of Columbia. There now exist forty-one such State societies, each of which is incorporated under the laws of the respective State where organized, and one such society incorporated under the laws of the District of Columbia. These forty-two societies have formed a federation under the name "The National Society of the Colonial Dames of America," which has and maintains offices and headquarters in the City of Washington in the District of Columbia from which are directed the general activities of the various member State societies.

During the year 1891 there was organized in the State of New York a patriotic and historical society under the name "The Colonial Dames of America." This society is incorporated under the laws of the State of New York and has chapters located in many of the cities of the several States of the United States.

For many years there has been organized and in existence in the United States a patriotic and historical society under the name "The Colonial Dames of the Seventeenth Century."

The purposes and aims of the society "The Colonial Dames of America" and of the society "The Colonial Dames of the Seventeenth Century" are generally of the same nature as those of the member State societies of the federation "The National Society of the Colonial Dames of America."

The membership of the aforementioned societies is limited and is confined to women, the majority of whom are active and prominent in national, State, and municipal social and civic affairs.

For more than 20 years last past, because of the activities of these several societies, more particularly the member societies of the federation "The National Societies of the Colonial Dames of America," and of the activities and prominence of their members, in carrying out the purposes and aims of the said societies, the words "Colonial Dames" have been associated by the public generally with these societies to such an extent that their use in connection with articles of trade and commerce, to identify, designate and describe such articles, causes the public generally to believe that such articles, so identified, designated, and described, are produced, approved, sponsored, endorsed, or recommended by one or more such societies.

Respondent's said preparations are not produced, approved, sponsored, endorsed or recommended by, or in any manner connected with or related to, any of said societies.

PAR. 8. The representations and implications of the respondents as aforesaid concerning the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin are false and misleading and have had, and do have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public and cause prospective purchasers to believe that said false and misleading representations and implications are true, and that said preparations have the efficacy and usefulness in the care, treatment and beautification of the skin as represented and implied by the respondents. The use by the respondents of the words "Colonial Dames" in their respective corporate names, and in identifying and designating the business conducted by them and in describing their said preparations in advertisements, in newspapers, pamphlets, books, circulars and in radio broadcasts, and as a trade-mark on the packages

and containers in which said preparations are sold, as hereinabove alleged, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and cause prospective purchasers erroneously to believe that said preparations are produced, approved, sponsored, endorsed, or recommended by one or more of the societies hereinabove described. Said erroneous beliefs cause a substantial portion of the purchasing public to purchase respondents' said preparations, thereby unlawfully and unfairly diverting trade to the respondents from their said competitors who truthfully represent their products, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 9. The acts, practices, and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and respondents' said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 12, 1937, issued and served its original complaint in this proceeding upon respondent, Colonial Dames Company, Ltd., a corporation stated to be trading as Colonial Dames, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and thereafter on June 7, 1937, issued and served its amended complaint upon the respondents, Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaints and the filing of respondents' respective answers thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts filed and executed by the respondents through their counsel, Alvord & Alvord, and by W. T. Kelley, Chief Counsel of the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in connection with any further testimony in support of the charges stated in the complaints, or in opposition thereto, and that the Commission might proceed upon said stipulation of facts and other evidence to be or which might be taken hereafter to make its report stating its findings as to the facts (including inferences which it might reasonably draw from the said stipulated 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 complaints, answers and stipulation, said stipulation having been approved and accepted, and the Commission, having considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Colonial Dames, Inc., is a corporation organized under the laws of the State of Delaware, but having its principal office and place of business located at 4652 Hollywood Boulevard, Hollywood, Calif. Respondent, Colonial Dames Company, Ltd., is a corporation organized and doing business under the laws of the State of California, with its principal office and place of business also located at 4652 Hollywood Boulevard, Hollywood, Calif.

Respondent, Colonial Dames, Inc., is now, and for several years last past has been, engaged in the sale and distribution of certain preparations designated as "Colonial Dames Beautifier" and "Colonial Dames Beauty Wash" for use in the care, treatment and beautification of the skin, and causes and has caused said preparations when sold to be transported from its said place of business in the city of Hollywood, State of California, into and across the several States of the United States and the District of Columbia to the purchasers thereof located at the various points in the said several States other than the State of California and in the District of Columbia. For some time respondent Colonial Dames, Inc., was engaged in the sale and distribution, in similar manner, of a certain preparation designated as "Colonial Dames Massage Cream." Respondent has discontinued the manufacture and sale of this product and states that it does not intend resuming the same.

Respondent, Colonial Dames Company, Ltd., makes some sales abroad and some interstate sales by mail. Such transactions are of small magnitude and importance, however. The business of said respondent, Colonial Dames Company, Ltd., consists principally of manufacturing cosmetics in its laboratories and selling the same in intrastate commerce to respondent, Colonial Dames, Inc.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, Colonial Dames, Inc., is and has been in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with other corporations, partnerships and individuals engaged in said commerce in the

Findings

26 F. T. C.

sale and distribution of preparations for the care, treatment and beautification of the skin. Respondent, Colonial Dames Company, Ltd., is and has been engaged in such competition to the extent of the interstate business done by it, as above stated.

PAR. 3. In the course and conduct of the business of respondents and of respondents' predecessors in the manufacture and sale of cosmetics, the words "Colonial Dames" appear and have appeared for many years as a part of the name for each company or firm and are or have been employed and used for many years by respondents and respondents' predecessors as aforesaid in advertising in newspapers, pamphlets, booklets, circulars, and more recently in radio broadcasts, as a trade name to indicate and identify the business conducted by respondents and respondents' predecessors and in describing the qualities and characteristics of their said preparations and as a trade mark on packages and containers to brand and identify the goods sold by them.

Respondents' principal place of business, located at 4652 Hollywood Boulevard, Hollywood, California, as aforesaid, is listed in the telephone directory as "Colonial Dames Corporation" and in connection therewith a local establishment for the sale of respondents' cosmetic products designated as "Colonial Dames Charm Shop" is operated at the same address. The "Corporation" and the "Charm Shop," located at the same address as aforesaid, are listed under the same telephone number. Cosmetic products of the respondents are labeled as sold by "Colonial Dames Company" and the words "Colonial Dames" coupled with a design depicting two dancing figures in colonial costume appear as a trade mark on products sold by respondents in commerce.

In further connection with the sale of their said products, respondents, particularly in connection with radio advertising, have conveyed to prospective purchasers among the consuming public various messages, creeds and representations from the "Head," "Chief Chemist" or "Famous Beauty Consultant" of the "Colonial Dames Laboratories," maintained and operated by Colonial Dames Company, Ltd.

PAR. 4. Respondent, Colonial Dames, Inc., advertises and has advertised its said products in newspapers circulated in various parts of the United States, through pamphlets, booklets and circulars distributed among the prospective purchasers in various parts of the United States and through radio broadcasts, in all of which it makes and causes to be made many statements concerning the efficacy and usefulness of said preparations in the care, treatment, and beautification of the skin.

In the course and conduct of its business as hereinabove described, respondent, Colonial Dames, Inc., to induce the purchase of its products, has made, published, or caused to be published, various statements, claims and representations with respect to the efficacy and usefulness of its said preparations in the care, treatment and beautification of the skin. Typical of said statements, claims and representations, among others, are the following:

(1) That Colonial Dames Beauty Wash will have an instant beautifying effect on the skin—works like magic in banishing stubborn blackheads, toning sallow skins, whitening and refining texture, and leaving the skin immaculately clean and just like velvet; (2) That Colonial Dames Beauty Wash, while not a chemical bleach, will gently bleach the skin, its whitening action being derived from the natural elements from which it is made.

Typical of representations made with respect to respondents' Colonial Dames Massage Cream are the following:

(1) That Colonial Dames Massage Cream is a superlative tissue cream and, being made with almond oil, quickly banishes all traces of dryness or sluggishness, leaving the skin freshly stimulated and vibrant; (2) That it softens and increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, thereby rebuilding and youthifying from *within*, thus working with nature instead of *against* it; (3) That it works perfectly with nature to rejuvenate the inner tissues—is more than a skin food and cleanser—is a *true skin rejuvenator*; that the purpose of said cream and nightly facial treatment therewith is to reestablish normal circulation so that every tiny cell is adequately nourished; that it is more than a cleanser—is a tissue cream as well; that it drives directly at the cause of all beauty imperfections and rids the skin of those enemies; that it reactivates the tissues from within stimulates cell structure, restores lubricating oils, exercises the muscles and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities the natural way; that it cures and prevents faulty skin texture by removing the cause; that it is a complete normalizing treatment; that it will cause complexion blemishes to quickly disappear.

Further representations are:

That respondents' Colonial Dames Beautifier remains always on the surface preventing pore clogging and actually building beauty into the skin; that respondents' beauty aids act on a different principle from most cosmetics and are effective because instead of attempting the impossible feat of "rubbing in youth and beauty" entirely from the outside, Colonial Dames Beauty Aids work according to the accepted laws of nature.

PAR. 5. In truth and in fact the said statements and representations made by respondents as aforesaid with respect to the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin were and are false, deceptive, and misleading in the following, among other, particulars:

The chief benefits derived from the use of Colonial Dames Massage Cream are due to massage rather than to the action of its ingredients;

According to the weight of scientific authority, Colonial Dames Beauty Wash does not banish stubborn blackheads, or tone sallow skins. Colonial Dames Massage Cream does not banish all traces of dryness or sluggishness, increase the circulation of fresh pure blood to every tiniest cell or tissue, or rebuild or youthify from within, or rejuvenate the inner tissues, or reestablish normal circulation, or drive directly at the cause of all beauty imperfections, or reactivate the tissues from within, or stimulate cell structure, or correct and prevent faulty skin texture;

The effect of Colonial Dames Beauty Wash upon the skin is merely to cleanse and not to bleach, and is not the "answer" to stubborn blackheads and sallow and discolored skin problems;

Colonial Dames Beautifier is beneficial chiefly as a powder base and does not prevent pore clogging nor "Actually build beauty into the skin"; does not act on a different principle from most cosmetics.

PAR. 6. There are among the competitors of respondents referred to in paragraph 1 hereof those who manufacture and sell in commerce products like or similar to those sold by respondents and who do not make false, misleading or extravagant claims or representations concerning such products but advertise and represent the same fairly and accurately.

PAR. 7. The National Society of the Colonial Dames of America, with headquarters at Dumbarton House, Washington, D. C., is a federation or organization of incorporated societies of 40 States of the United States and the District of Columbia. The society is principally historical and patriotic. Among its definite aims are to commemorate the history of the Original Thirteen Colonies and to teach their lessons of patriotism to the citizens of the future.

The total membership of the National Society of the Colonial Dames of America was 434 in 1894, 2,050 in 1896, 5,579 in 1906, 8,128 in 1916, 9,595 in 1925 and 11,603 in 1935. The California organization affiliated with The National Society of the Colonial Dames of America was initiated in 1896. It had a membership of 115 in 1904, 169 in 1914, 172 in 1925 and 235 in 1935. The population of the State of California in 1930 was 5,677,251.

PAR. 8. During the year 1891, there was organized in the State of New York a patriotic and historical society under the name "The Colonial Dames of America." This organization now has chapters located in Baltimore, Philadelphia, Washington, Paris (France), San Francisco, Shreveport (Louisiana), Nashville, Dallas, Danville (Kentucky), Rome (Italy) and London (England). The total membership of this society amounted to 350 in 1889 and to 4,000 in 1935, many of whom were resident abroad. The work done by the society is confined principally to the territory of the thirteen original American colonies.

PAR. 9. In May 1896, there was incorporated in the State of New York a social and patriotic organization known as "Colonial Daughters of the Seventeenth Century." This organization has auxiliary chapters in New York and various other States of the United States, and the present organization includes in its membership ladies living in the various States of the United States. The total membership of this society is unknown.

Respondents' said preparations are not produced, approved, sponsored or recommended by, or in any manner connected with or related to, any of said societies, and none of said societies is now, or ever has been, engaged in the manufacture or sale of cosmetics or of any other preparation or product of commerce.

PAR. 10. The words "Colonial Dames" have been and are frequently used and understood by the public generally to describe and designate American ladies of the Colonial period and were so used and understood prior to the organization of any of the societies above mentioned.

The term "Colonial Dame" is also occasionally used to describe a descendant of an American personage of the Colonial period whether or not such descendant is a member of one of the above mentioned societies.

PAR. 11. The trade mark "Colonial Dames" was registered by respondents' predecessors in the State of California in 1906 and with the United States Patent Office in 1922.

PAR. 12. For many years subsequent to 1886 the marketing and distribution of the products of respondents' predecessors were confined to the Pacific Coast. At the present time, approximately 45 percent of the sales of respondents' products are made in California and an additional 30 percent in the States of Washington and Oregon. The words "Colonial Dames" are, and for many years have been, associated in the minds of people on the Pacific Coast and elsewhere with the products of respondents and their predecessors.

Order

26 F. T. C.

PAR. 13. The use by respondents of the hereinbefore enumerated false and misleading representations in connection with the offering for sale and the sale of respondents' said products has had and does have the tendency and capacity to and does mislead a substantial portion of the purchasing public and causes prospective purchasers to believe that said false and misleading representations are true and that said preparations have the efficacy and usefulness in the care, treatment and beautification of the skin as represented and implied by the respondents. The use by respondents of the words "Colonial Dames" in their respective corporate names, and in identifying and describing their said preparations in advertisements, in newspapers, pamphlets, books, circulars and radio broadcasts, and as a trade name on the packages and containers in which said preparations are sold as hereinabove described, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and causes prospective purchasers erroneously to believe that said preparations are produced, approved, sponsored, endorsed, or recommended by one or more of the societies hereinabove described. Said erroneous beliefs induced by the various misrepresentations of the respondents as herein detailed, cause and have caused a substantial portion of the purchasing public to purchase respondents' said preparations, thereby unlawfully and unfairly diverting trade to respondents from competitors engaged in selling in interstate commerce preparations which are recommended for use in connection with the care, treatment and beautification of the skin and which are truthfully and accurately represented.

CONCLUSION

The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' 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 amended complaint of the Commission, the answer of respondents thereto, and the agreed stipulation as to the facts entered into between the respondents herein, Colonial Dames, Inc., and Colonial Dames Company, Ltd., and W. T. Kelley, chief counsel of the Commission, which stipulation provides that the statement of facts contained therein may be taken as the facts in this proceeding in connection with any further testimony in support of the

1260

Order

charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said stipulation of facts and other evidence to be or which may be taken hereafter to make its report, stating its findings as to the facts (including inferences which it may reasonably draw from the said stipulated facts) and its conclusion based thereon, and to enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the said respondents, Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, their officers, servants, employees, or agents, individual or corporate, in connection with the advertising, describing, offering for sale and sale in interstate commerce or in the District of Columbia of preparations used or to be used in the care, treatment, and beautification of the skin, do forthwith cease and desist from:

1. Representing that Colonial Dames Massage Cream is a skin rejuvenator, a skin food;

2. Representing that the chief benefits derived from the use of Colonial Dames Massage Cream are due to the action of its ingredients rather than to massage;

3. Representing that Colonial Dames Massage Cream banishes all traces of dryness or sluggishness, increases the circulation of fresh pure blood to every tiniest cell or tissue of the skin, thereby rebuilding and youthifying from within; reestablishes a normal circulation and drives directly at the cause of all beauty imperfections, and rids the skin of those enemies; reactivates or rejuvenates the tissues from within; stimulates cell structure and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities; or cures and prevents faulty skin texture and actually builds beauty into the skin;

4. Representing that the effect of Colonial Dames Beauty Wash upon the skin is that of a bleach and not merely a cleansing agency;

5. Representing that according to the weight of scientific authority Colonial Dames Beauty Wash banishes stubborn blackheads and tones sallow skins;

6. Representing that Colonial Dames Beautifier prevents pore clogging and actually builds beauty into the skin; that it acts on a different principle from most cosmetics; and from making other representations of similar tenor or import or any other or further representations concerning the efficacy and usefulness of respondents' said preparations in the care, treatment, and beautification of the skin unless and until said representations are true in fact;

Order

26 F. T. C.

7. Using the words "Colonial Dames" in their respective corporate names, in identifying and describing the business conducted by them and in describing their said preparations in advertisements, newspapers, pamphlets, books, circulars, and radio broadcasts, or through any other means or device or in any other manner, without clearly and conspicuously adding in immediate connection or conjunction therewith the words "Not connected with any society."

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

Order

IN THE MATTER OF

LASALLE EXTENSION UNIVERSITY

MODIFYING CEASE AND DESIST ORDER

Docket 2654. Order, May 18, 1938

Order granting petition of respondent to modify Commission's prior cease and desist order entered against it in Docket 2654, on May 19, 1937, 24 F. T. C. 1286, prohibiting misrepresentations in connection with use of words "Extension University," as therein specified, and order in question modified as below set forth.

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

Mr. J. T. Welch for the Commission.

LaRochelle, Brooks and Beardsley, of Chicago, Ill., and *Mr. George L. Schein* and *Mr. H. B. Cox*, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the petition of respondent to modify the order to cease and desist issued herein on May 19, 1937, and upon oral argument by counsel for respondent in support of said petition to modify heard by the Commission on March 18, 1938, and the Commission having duly considered said petition and oral argument and the record herein, and being now fully advised in the premises;

It is ordered, That the petition to modify the order to cease and desist issued herein be, and the same is, hereby granted, and the said order is hereby modified so as to read:

It is ordered, That the respondent LaSalle Extension University, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of correspondence courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the term "Extension University" or the word "University" in its corporate name, or in any other manner, that it is, or that it conducts, a university or an extension university; unless and until respondent shall insert and use also the words "a correspondence institution," or the words "an institution for correspondence students," in immediate conjunction with its title, corporate name, or other designation, and in letters equally legible and conspicuous with said title, corporate name, or