

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1938, TO DECEMBER 31, 1938

IN THE MATTER OF HELENA RUBINSTEIN, 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 2939. Complaint, Oct. 2, 1936—Decision, June 1, 1938

Where a corporation engaged in the advertisement, sale, and distribution of a line of cosmetics, facial creams, and toilet preparations, including some fifteen separate products and, among others, "Youthifying Hand Cream," "Grecian Anti-Wrinkle Cream," "Golden Automatic Lipstick," "Youthful Herbal Mask," "Herbal Eye Tissue Oil," "Marienbad Slenderizing Bath Salts," "Eyelash Grower and Darkener," "Eye Lotion," "Hormone Scalp Food," "Hormone Beauty Mask," and "Hormone Twin Youthifier" creams "No. 1" and "No. 2," for day and night use respectively, in substantial competition with others engaged in distribution and sale of similar preparations in commerce among various States and in the District of Columbia—

Misrepresented, in advertising said line of cosmetics, creams, and preparations in newspapers and periodicals of general circulation throughout the various States, and in advertising literature and folders printed and similarly circulated to customers and prospective customers, and through statements on the labels and containers thereof, the composition, properties, and results of aforesaid various fifteen or sixteen preparations, and falsely represented that they would, as the case might be, serve as a food for or nourish the skin, muscles, or tissues, and prevent crows feet and wrinkles, and revitalize skin tissues, and contained living sparks of life which increased their therapeutic value, and that they would rebuild worn out cells and restore youth to dry, lined, wrinkled skin, and would dissolve fatty tissues and act as effective fat reducers, and strengthen the eye nerves;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said misrepresentations were true, and with effect, as consequence thereof, that some of purchasing public may have bought substantial volume of its products with resulting unfair diversion of trade to it from competitors likewise engaged in distribution and sale of cosmetics, facial creams, and toilet preparations; to the substantial injury of competition in commerce:

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

Complaint

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Mr. Morton Nesmith for the Commission.

Mr. Henry M. Flateau, of New York City, for respondent.

COMPLAINT¹

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 Helena Rubinstein, Inc., hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. The respondent, Helena Rubinstein, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 8 East Fifty-seventh Street in the city of New York, State of New York. It is now and for more than 1 year last past has been engaged in advertising, selling, and distributing a line of cosmetics, facial creams, and toilet preparations hereinafter more particularly described. Respondent has caused and still causes said cosmetics, facial creams, and toilet preparations when sold, to be transported from its place of business in the State of New York to purchasers thereof, some located in the State of New York and others located in various States of the United States and the District of Columbia, and there is now, and has been for more than 1 year last past, a constant current of trade in commerce in cosmetics, facial creams, and toilet preparations sold by respondent between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling similar cosmetics, facial creams, and toilet preparations in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its said business in soliciting the sale of and selling said cosmetics, facial creams, and toilet prep-

¹ An extended enumeration in par. 3 of the complaint, quoting respondent's representations in advertising and on labels and containers, purporting to describe 15 items offered and sold by it, which also appears in the findings, *infra*, at pages 5 and 6, is omitted from the complaint as published.

arations, and for the purpose of inducing the purchase of said preparations, respondent has caused and still causes advertisements to be inserted in newspapers and magazines of general circulation throughout the various States of the United States, and has printed and circulated advertising folders and literature to customers and prospective customers in the same manner. In all of its advertising literature, through statements and representations herein set out, and through statements and representations of similar import and effect displayed on the labels and containers of said preparations the respondent represents among other things the following:²

PAR. 4. The representations made by the respondent with respect to the properties, nature and effect of said cosmetics, facial creams, and toilet preparations, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said preparations do not possess properties or contain ingredients that will feed or nourish the skin or lips, revitalize or restore youth to the skin, or prevent crows feet, wrinkles, or lines about the eyes. Said preparations do not contain hormones or living sparks of life which increase the therapeutic value of the products. Respondent's "Marienbad Slenderizing Bath Salts" will not dissolve fatty tissues, nor are they effective weight reducers. Respondent's "Eye Lotion" will not relieve eye strain or strengthen eye nerves. Respondent's "Eyelash Grower and Darkener" will not grow or promote the growth of eyelashes in all cases, nor will respondent's "Hormone Scalp Food" improve the growth and texture of the hair in all cases. Respondent's "Youthful Herb Mask" does not contain the juices of 23 different herbs.

PAR. 5. There are among the competitors of the respondent, many who distribute and sell similar cosmetics, facial creams, and toilet preparations in commerce, who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses, or effects of their said competing products.

PAR. 6. The representations of respondent as aforesaid, have had and have the capacity and tendency to confuse, mislead, and deceive a substantial portion of the purchasing public, into the erroneous belief that all of said representations are true, and that the results claimed by respondent will be obtained by the purchasers thereof from the use of said products in the treatment of various conditions named therein. Said representations of respondent have had and have the capacity and tendency to induce members of the public to

²The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the properties, nature, and effect of 15 items of cosmetics, facial creams, and toilet preparations offered and sold by it, is also set forth in the findings, *infra*, at pages 5 and 6, and for that reason is here omitted in the interest of brevity.

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purchase said preparations because of the erroneous beliefs engendered by said representations, and to unfairly divert trade to respondent from competitors engaged in the sale in interstate commerce of cosmetics, facial creams, and toilet preparations similar to those sold by respondent, and substantial injury has been and is being done by respondent to substantial competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on October 2, 1936, issued and on October 5, 1936, served its complaint upon the respondent Helena Rubinstein, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Thereafter on the 15th day of December 1936, the Commission made, entered, issued, and served its findings as to the facts and conclusion, predicated upon a stipulation as to the facts, together with an order to cease and desist upon the respondent. Thereafter it appearing that certain inferences, properly inferable from the stipulated facts, were omitted in said findings, and respondent, through its counsel, having agreed to the amendment of said findings as to the facts in order to include such inferences; and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion drawn therefrom:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Helena Rubinstein, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 8 East Fifty-seventh Street, in the city

of New York, State of New York. It is now, and for more than 1 year last past, has been engaged in advertising, selling, and distributing a line of cosmetics, facial creams, and toilet preparations, hereinafter more particularly set out. The respondent has caused and still causes said cosmetics, facial creams, and toilet preparations, when sold, to be transported from its place of business in the State of New York, to purchasers thereof, some located in the State of New York, and others located in the various States of the United States and the District of Columbia, and there is now, and has been for more than 1 year last past, a constant current of trade in commerce in cosmetics, facial creams, and toilet preparations sold by respondent between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling similar cosmetics, facial creams, and toilet preparations in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its said business in soliciting the sale of and selling said cosmetics, facial creams, and toilet preparations, and for the purpose of inducing the purchase of said preparations, respondent has caused and still causes advertisements to be inserted in newspapers and magazines of general circulation throughout the various States of the United States and has printed and circulated advertising literature and folders to customers and prospective customers in the same manner. In all of its advertising literature, and through statements and representations herein set out, and through statements and representations of similar import and effect displayed on the labels and containers of said preparations, the respondent represents among other things the following:

1. Youthifying Hand Cream. Keeps hands lovely, overcomes roughness, redness and chapping, youthifies age betraying hands.

Restores youth to age betraying hands. Wonderful nourisher of dry lined or shriveled hands, restores youth to scrawny ageing hands.

2. Grecian Anti-Wrinkle Cream. A nourishing skin food; corrects and prevents crows feet, lines and wrinkled lids, nourishes their dry skins. It contains nourishing ingredients the tissues need. A rich nourishing cream that is unusually effective.

3. Golden Automatic Lipstick. Actively nourishes the lip tissues; contains biological ingredients; produces youthful moisture.

4. Youthful Herbal Mask. Contains the juices of twenty-three different herbs which replenish the skin with the elements of youth and loveliness; irons out lines and wrinkles.

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5. Herbal Eye Tissue Oil. Its nourishing biological ingredients smooth and soften the delicate eye area. Prevents and corrects crows feet, lines and under eye wrinkles.

6. Marienbad Slenderizing Bath Salts. Marienbad Slenderizing Bath Salts dissolving the fatty particles in the body, their beneficial action dries out layer after layer of fatty tissue, until excess fat disappears; they stimulate the skin, increase the metabolism and restore the normal weight of the body without the depressing effects of severe reducing methods. The pores are thoroughly cleansed and the skin becomes firm and silky smooth.

This amazing new scientific discovery dissolves fatty tissue, reducing the weight by one to three pounds in one week; process is as simple as it is safe, swift.

7. Novena Cerate. (a rich feeding night cream). A remarkable nourisher and rebuilders. Excellent for very fine dry sensitive skins.

8. Eyelash Grower and Darkener.

9. Herbal Cream. Ideal nutritive for dry, harsh, wrinkled and sensitive skins. An absolutely unique tissue creation compounded of rare and nourishing herbs. It quickly restores satiny smoothness and exquisite texture to wrinkled weather beaten and prematurely aged skin.

10. Anti-Wrinkle Lotion. Youthifies dry, lined skin and tired eyes. Corrects and prevents fine lines and crows feet.

11. Eye Lotion. Cleanses, refreshes, relieves strain; strengthens the eye nerves.

12. Herbal Muscle Oil. Contains the nourishing ingredients that the tissues need in a form easily assimilated by the skin cells; rounds out hollows under the eyes. Restores lined, stringy throats to youthful smoothness.

13. Hormone Scalp Food. Improves growth and texture of hair; smoothes irritated scalps.

14. Hormone Beauty Mask. Contains living hormones—those “sparks of life”, the youth giving powers of hormones—those “sparks of life” are directly responsible for the marvelous effect Hormone Tissue Mask has on the skin. Absorbs lines and drabness; firms the contour, revitalizes the skin tissues. Resculptures, youthifies and beautifies fatigued skin.

15. Hormone Twin Youthifier #1 Day Cream. Hormone Twin Youthifier #2 Night Cream. The Hormone Twin Youthifiers, which contain the elements used by nature herself—hormones—are “sparks of life.” The Hormone Twin Youthifiers are two creams so compounded that the glandular substances which they contain are richly assimilated by the skin. They penetrate deeply, stimulating skin metabolism, rebuilding worn out cells. Shrunken tissues are quickly rebuilt; relaxed muscles are tightened and the dull, weather beaten look of age vanishes. They restore youth to dry, lined, wrinkled skin. You will marvel at the instantaneous youthifying action of these two creams—the day cream or awakening cream, and the night cream or feeding cream. They work together in marvelous harmony literally lifting the years from you, actually feeding the return of youth.

PAR. 4. Respondent's Youthifying Hand Cream does not restore youth to scrawny, ageing hands. Respondent's Grecian Anti-Wrinkle Cream is not a nourishing skin food; does not correct and prevent crows feet, lines, and wrinkled lids, neither does it nourish dry skin nor contain nourishing ingredients the tissues need, nor is

it a rich nourishing cream that is unusually effective. Respondent's Golden Automatic Lipstick does not actively nourish the lip tissues. Respondent's Youthful Herbal Mask does not contain the juices of 23 different herbs which replenish the skin with elements of youth and loveliness. Respondent's Herbal Eye Tissue Oil does not contain nourishing ingredients, nor does it prevent and correct crows feet, lines and under-eye wrinkles. The respondent's bath salts "Marienbad Slenderizing Bath Salts," will not dissolve the fatty particles in the body, nor will their beneficial action dry out layer after layer of fatty tissues until excess fat disappears; nor will they stimulate the skin, increase the metabolism and restore the normal weight of the body without the depressing effects of severe reducing methods; nor will this amazing new scientific discovery dissolve fatty tissues, reduce the weight by 1 to 3 pounds in 1 week, and neither is its process as simple as it is safe, swift. Respondent's Novena Cerate is not a remarkable nourisher and builder of skin. Respondent's Eyelash Grower and Darkener will not grow or promote the growth of eyelashes except in cases where the present eyelashes have living follicles. Respondent's Herbal Cream is not an ideal nutritive for the skin. Respondent's Anti-Wrinkle Lotion will not prevent fine lines and crows feet in the skin. Respondent's Eye Lotion will not strengthen eye nerves. Respondent's Herbal Muscle Oil does not contain nourishing ingredients that the tissues need in a form easily assimilated by the skin cells. The respondent's product "Hormone Scalp Food" is not a scalp food, and will not improve growth and texture of the hair or smooth irritated scalps. Respondent's Hormone Beauty Mask does not contain living "sparks of life,"—those "sparks of life" are directly responsible for the marvelous effect Hormone Beauty Mask has on the skin, nor will it absorb lines and drabness; firm the contour, or revitalize the skin tissues; and neither will it resculpture and youthify fatigued skin. Respondent's Hormone Twin Youthifier #1, Day Cream and Hormone Twin Youthifier #2, Night Cream do not contain "sparks of life," neither do they rebuild worn out cells; nor do they quickly rebuild shrunken tissues nor restore youth to dry, lined or wrinkled skin. Neither will they literally lift the years from one, or actually feed the return of youth.

PAR. 5. The use by the respondent of the representations set forth herein has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence thereof some of the purchasing public may have purchased a substantial volume of respondent's products with a resulting unfair diversion of trade to

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the respondent from its competitors likewise engaged in the business of distributing and selling cosmetics, facial creams, and toilet preparations. As a result thereof substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Helena Rubinstein, Inc., a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on the 2d day of October 1936, and a stipulation as to the facts in lieu of testimony heretofore entered into by and between the respondent and the Federal Trade Commission in which stipulation the respondent admits without further evidence and without intervening procedure the Commission may make, enter, issue, and serve upon respondent its 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 considered the complaint and the facts so stipulated and having made its findings as to the facts and conclusion and its modified findings as to the facts and conclusion that respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered. That the respondent, Helena Rubinstein, Inc., a corporation, its directors, officers, agents, and representatives and employees, in connection with the distribution and sale of cosmetics, facial creams, and toilet preparations in interstate commerce cease and desist from:

Advertising or representing directly or indirectly, in newspapers, magazines, radio broadcasts, circulars, display cards, on cartons or any other form of advertising literature or in any other way, that any of said cosmetics, facial creams, and toilet preparations:

1. Will serve as a food for or nourish the human skin, muscles, or tissues;
2. Will prevent crow's feet and wrinkles and revitalize the skin tissues;
3. Will strengthen the eye nerves;

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4. Contain living sparks of life which increase the therapeutic value of the products.

5. Will rebuild worn-out cells;

6. Will restore youth to dry, lined, wrinkled skin;

7. Will dissolve fatty tissues or act as effective weight reducers.

It is further ordered, That the respondent, Helena Rubinstein, Inc., a corporation, its directors, officers, agents, and representatives and employees shall within 90 days from the date of service upon it of a copy of this order file with the Commission a report in writing setting forth the manner and form in which it has complied with the order herein set forth.

IN THE MATTER OF
MARVO BEAUTY LABORATORIES, INC.

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

Docket 3012. Complaint, Dec. 9, 1936—Decision, June 1, 1938

Where a corporation engaged in the manufacture and sale of a toilet preparation and skin treatment under the trade name of "Marvo Liquid Skin Peel" or "Marvo Skin Peel" or sometimes simply "Marvo"; in advertising its products in various mediums and by circular letters, pamphlets and other printed matter sent to purchasers and prospective purchasers—

Represented that the same was a new, harmless liquid, and that it would remove blemishes and signs of age visible in the epidermis, or outer layer of skin, including pimples and other defects and undesirable conditions, such as discolorations, etc., and would restore clearness and beauty to such new outer layer, and supply a new, fresh outer skin on any part of the body in 3 days, removing ugly blemishes, etc., and that it was recommended by physicians and legions of satisfied users for quickly and harmlessly removing blemishes and signs of age visible in the epidermis, and through removing blemished outer skin would often prevent the development of some horrible skin condition or disease;

Facts being that pimples or acne, blackheads, and certain other skin conditions referred to are not always exclusively in the outer layer thereof, but, for the most part, constitute conditions having their origin in the true skin or dermis, and removal of outer layer does not and cannot result in a cure for such various conditions, and preparation in question will not, in view of the nature thereof, permanently remove pimples and blackheads or give a new outer skin within 3 days, and is not recommended by physicians;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were true and that such product possessed the properties and qualities claimed, and to cause a substantial part of such public, because of such erroneous and mistaken belief, to buy said product, and thereby unfairly divert trade to it from competitors, including individuals and concerns engaged in substantial competition with it in sale of preparations for skin infections and conditions set forth by it, and who do not misrepresent the qualities, merits, and effectiveness of their said preparations:

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. John W. Norwood* and *Mr. William C. Reeves*, trial examiners.

Mr. S. Brogdyne Teu, II for the Commission.

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