

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.

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 Marvo Beauty Laboratories, Inc., a corporation, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Marvo Beauty Laboratories, Inc., is, and has been since 1931, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 1700 Broadway, New York City. During said time it has done business also under the name of Marvo, Inc. It is, and has been, engaged in the business of manufacturing and selling a toilet preparation and skin treatment under the trade name of Marvo Liquid Skin Peel, sometimes referred to as Marvo Skin Peel and sometimes Marvo. Pursuant to such sales and as a part thereof, respondent ships, and has shipped, its said product from its place of business in New York through and into various other States of the Union to the purchasers. To induce the public to purchase its product, respondent has advertised, and is now advertising, in various mediums and by circular letters, pamphlets, and other printed matter sent to prospective purchasers.

PAR. 2. The respondent in such advertising has represented and now represents that its said product is a new, harmless liquid; that it will remove blemishes and signs of age visible in the epidermis or outer layer to the skin, including pimples, blackheads, acne, pus pustules, whiteheads, freckles, tan, coarse pores, dry skin scales, oily skin, blotches, sallow skin, discolorations, flabbiness, simple eczema, and other affections; that it will restore clearness and beauty to the new outer layer of the skin; that it will impart to the skin the magic of a new, clear youth-like skin; that it will give a new fresh outer skin on any part of the body in three days, removing ugly blemishes and renewing youthful beauty; that it is recommended by physicians and legions of satisfied users for quickly and harmlessly removing blemishes and signs of age visible in the epidermis or outer layer of the skin, including the affections and conditions heretofore enumerated; that it will remove a blemished outer skin thus often preventing

the development of some horrible skin condition or disease; that the preparation quickly reduces enlarged pores and removes blackheads.

PAR. 3. In truth and in fact, pimples or acne, blackheads, enlarged pores, wrinkles, and the other affections mentioned in paragraph 2 hereof are not affections of the outer layer of the skin but of the true skin or derma; the removal of the outer layer of the skin does not and cannot result in a cure for pimples, blackheads, wrinkles, enlarged pores or the other affections of the true skin; wrinkles and enlarged pores cannot be removed by eliminating the outer layer of the skin; pimples and blackheads are the result of inflammation centered around a gland, duct, or hair follicle and the application of respondent's product would not only not remove them, but would cause further inflammation, and is not harmless; any effect of said product on the skin is only temporary; it will not give a new outer skin within 3 days; and it is not recommended by physicians as represented by respondent.

PAR. 4. During all the time since respondent's organization and the marketing of its said product, there have been in the United States other persons, firms, and corporations engaged in the sale of preparations for treating, ameliorating, or removing the skin affections and blemishes enumerated by respondent in its advertising, who pursuant to such sales and as a part thereof have shipped and ship their preparations from their respective places of business through and into various States of the United States other than the States of the points of origin of such shipments. These other persons, firms, and corporations have not misrepresented, and do not misrepresent, the qualities and merits and effectiveness of their respective preparations. With these other persons, firms, and corporations respondent has been and is in active, substantial competition.

PAR. 5. The tendency, capacity, and effect of respondent's acts and practices in so misrepresenting the qualities and virtues and effectiveness of its said product, as hereinabove alleged, have been, and are, to deceive the public and to divert business to respondent from its said competitors, to the substantial loss and injury of said competitors.

PAR. 6. The acts and practices of respondent in so misrepresenting its product have been and are to the prejudice and injury of its said competitors, and to the prejudice of the public interest, and constitute unfair methods of competition in commerce within the intent and meaning 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 December 9, 1936, issued and on December 11, 1936, served its complaint in this proceeding upon the respondent, Marvo Beauty Laboratories, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into by W. T. Kelley, Chief Counsel of the Commission, and John A. Bolles, counsel for the respondent, which said stipulation was thereafter duly approved by the Commission and recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto and the stipulation as to the facts, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Marvo Beauty Laboratories, Inc., is a corporation organized in 1931, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 1700 Broadway, city of New York, State of New York. Respondent is now, and has been since the date of its organization, engaged in the business of manufacturing and selling a toilet preparation and skin treatment under the trade name of "Marvo Liquid Skin Peel," sometimes referred to as "Marvo Skin Peel" and sometimes as "Marvo."

PAR. 2. Respondent ships its products, when sold, from its place of business in New York to the purchasers thereof located in States of the United States other than New York and in the District of Columbia.

PAR. 3. The respondent, in order to induce the public to purchase its product, has advertised and is now advertising, its product in various mediums and by circular letters, pamphlets, and other printed matter sent to purchasers and prospective purchasers.

Respondent, in its advertising, has represented and now represents, that its product is a new, harmless liquid; that it will remove blemishes and signs of age visible in the epidermis or outer layer of the skin, including pimples, blackheads, acne, pustules, whiteheads,

freckles, tan, coarse pores, dry skin scales, oily skin, blotches, sallow skin, discolorations, flabbiness, simple eczema, and other conditions of the skin; that it will restore clearness and beauty to the new outer layer of the skin; that it will impart to the skin the magic of a new, clear, youth-like skin; that it will give a new, fresh outer skin on any part of the body in 3 days, removing ugly blemishes and renewing youthful beauty; that it is recommended by physicians and legions of satisfied users for quickly and harmlessly removing blemishes and signs of age visible in the epidermis or outer layer of the skin, including the conditions herein detailed; that it will remove a blemished outer skin, thus often preventing the development of some horrible skin condition or disease; that the preparation quickly reduces enlarged pores and removes blackheads.

PAR. 4. Pimples or acne, blackheads, enlarged pores, wrinkles, and other conditions of the skin herein detailed are not always exclusively conditions of the outer layer of the skin, but for the most part are conditions having their origin in the true skin or dermis. The removal of the outer layer of the skin does not and cannot result in a cure for pimples, blackheads, wrinkles, enlarged pores, or other conditions of the true skin. Wrinkles and enlarged pores cannot be permanently removed by eliminating the outer layer of the skin. Pimples and blackheads are the result of inflammation centered around a gland duct, or hair follicle, and the application of respondent's product will not permanently remove them. Respondent's product will not give a new outer skin within 3 days, and it is not recommended by physicians.

PAR. 5. Since the time of the respondent's organization it has been in substantial competition with individuals, partnerships, firms, and corporations engaged in the sale of preparations for treating, ameliorating, or removing the skin infections and conditions enumerated by respondent in its advertising who, pursuant to such sales and as a part thereof, have shipped, and now ship, their preparations from their respective places of business through and into the various States of the United States and into the District of Columbia.

These individuals, firms, partnerships, and corporations have not misrepresented, and do not now misrepresent, the qualities, merits, and effectiveness of their respective preparations.

PAR. 6. The acts and practices of the respondent in using the false representations, in connection with the sale and distribution of its product, as hereinabove set out, have the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that the representations are true and that the prod-

uct possesses the qualities and properties claimed; and to cause a substantial part of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's product. As a result thereof trade in interstate commerce has been diverted unfairly to the respondent from its competitors.

CONCLUSION

The acts and practices of respondent, Marvo Beauty Laboratories, Inc., are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 thereto and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and John A. Bolles, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Marvo Beauty Laboratories, Inc., its representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of toilet preparations now designated as "Marvo Liquid Skin Peel," "Marvo Skin Peel," and "Marvo" or any other toilet products containing substantially the same ingredients or possessing the same properties sold under these names or any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

That the respondent's product is a new, harmless product; that it will remove blemishes and signs of age visible in the epidermis or outer layer of the skin, including pimples, blackheads, acne, pustules, whiteheads, freckles, tan, coarse pores, dry skin scales, oily skin, blotches, sallow skin, discolorations, flabbiness, simple eczema, or any other condition of the skin; that it will restore clearness and beauty to the outer layer of the skin; that it will impart to the skin the magic of a new, clear, youth-like skin; that it will give a fresh outer skin on any part of the body; that it will remove ugly blemishes and renew youthful beauty; that it is recommended by physicians for quickly and harmlessly removing blemishes and signs of age visible in the epidermis or outer layer of the skin; that it will prevent the

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development of horrible skin conditions or diseases; and that the product will quickly reduce enlarged pores and remove blackheads.

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

Complaint

IN THE MATTER OF

HARRY J. KATZ AND LOUIS BLACK, INDIVIDUALLY AND
TRADING AS THE NUTEX COMPANY

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

Docket 3271. Complaint, Nov. 22, 1937—Decision, June 1, 1938

Where a firm engaged in sale and distribution of rubber prophylactics in commerce among the various States and in the District of Columbia—

Set forth on the containers of said products such statements as "Mfg. by The Nutex Co.," etc., and on their business stationery, and following their aforesaid trade name, the words "Manufacturers and Distributors of Druggists' Sundries," notwithstanding fact they did not manufacture products sold by them, and were not manufacturers, from whom substantial part of consuming public has long preferred to buy as affording opportunity to secure superior article at same price, or equivalent one at lower price, than if purchased through intermediary, but purchased such products in open market from those who did;

With tendency and capacity to mislead a substantial number of purchasers into erroneous and mistaken beliefs that aforesaid products were made by said firm, and with result that trade was unfairly diverted to them from competitors engaged in like and similar businesses, among whom there are those who make and distribute like and similar commodities or other products designed and intended for similar uses, and who truthfully advertise and represent their business status and refrain from advertising or representing, through their price lists, brand marks, and other advertising media, that they possess a business status which they do not have; to the substantial injury of competition in commerce;

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

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

Mr. Ralph S. Fowler, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Harry J. Katz and Louis Black individually and trading as The Nutex Co., hereinafter referred to as respondents, have been and are now 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: