

Complaint

IN THE MATTER OF
KELLY J. SHADDY, DOING BUSINESS AS MAGIC
CHEMICAL CO.

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

Docket 2870. Complaint, June 30, 1936—Decision, June 15, 1938

Where an individual engaged in the manufacture of a vegetable oil preparation for the treatment of the scalp and hair, and in the sale of said preparation as a "Hair Rejuvenator"—

Falsely represented, through radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, that "Dandruff is the main cause of baldness," etc., and that said preparation would eradicate dandruff and stop falling hair and stimulate and promote the growth of hair and induce new hair to grow to replace that which had fallen out, and that it took care of the entire needs of the hair, continually helping to keep the hair organs functioning normally in accordance with nature, etc., and promoted lively hair growth and was the world's safest hair dressing;

Facts being dandruff is not principal cause of baldness, there is no one preparation that will serve as a specific for all conditions or disorders of the scalp or hair, and aforesaid various representations were false and misleading;

With effect of misleading and deceiving retailers and members of the purchasing public into the erroneous belief that its preparation possessed the properties, capacities, and beneficial values claimed for it as above set forth, and into purchase thereof in and on account of such beliefs, and with result of placing in the hands of retailers thereof the means of deceiving and misleading members of the purchasing public as to the true merits and properties of the product, and of diverting thereby unfairly trade to him from competitors selling in commerce who do not falsely represent that their respective preparations will eradicate or permanently remove dandruff or stop or prevent falling hair or accomplish the other results claimed by him for his said preparations:

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

Before *Mr. Charles P. Vicini*, *Mr. Henry M. White*, and *Mr. John J. Keenan*, trial examiners.

Mr. T. H. Kennedy, *Mr. P. C. Kolinski*, and *Mr. Merle P. Lyon* for the Commission.

Mr. Roger A. Bramy, of San Francisco, Calif., 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

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Federal Trade Commission, having reason to believe that Kelly J. Shaddy, doing business as Magic Chemical Co., hereinafter referred to as respondent, has been and now is 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kelly J. Shaddy, doing business as Magic Chemical Co., maintains his manufacturing establishment and principal place of business at 370 Turk Street, San Francisco, Calif. Respondent is and for more than 2 years last past has been engaged in the manufacture of a vegetable oil preparation for the treatment of the scalp and hair, and has been engaged in the sale of said preparation under the trade name of "Shaddy's Hair Rejuvenator" between and among the various States of the United States and in the District of Columbia. During all of said time he has caused, and still causes, said product when sold by him to be transported from his place of business in California, or other places within the United States, to purchasers thereof, some located in the State of California and others located in various States of the United States other than the State of origin of the shipment, and in the District of Columbia. In the course and conduct of his said business respondent is now, and for more than two years last past has been, in constant competition with other persons, firms, partnerships, and corporations engaged in the sale of hair tonics and other preparations intended for use on the human hair and scalp in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, described herein, respondent for more than 2 years last past has, by means of radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, represented, and still represents, that his said product, when applied to the scalp and hair, eradicates dandruff, takes care of the entire needs of the hair, and continually helps keep the hair organs functioning normally in accordance with Nature, stimulates perfect circulation, stops falling hair, promotes lively hair growth, and is the world's safest hair dressing.

Respondent has distributed said pamphlet, advertising matter, and testimonials among his prospective customers and placed the same in the hands of his agents and distributors in various States of the United States for use by them in advertising his said product.

Respondent has likewise represented that his said product is a hair rejuvenator and that dandruff is the main cause of baldness.

Said representations have been made and are made by respondent in such a way that purchasers and prospective purchasers of respondent's products are led to believe that respondent's product will cure or relieve any or all of the diseases or ailments above set forth.

In truth and in fact each and every said representation has been and is untrue, and respondent's said product is not, nor has it ever been a rejuvenator, nor has it ever, nor does it now eradicate dandruff, take care of the entire needs of the hair and continually help keep the hair organs functioning normally in accordance with Nature, stimulate perfect circulation, stop falling hair, and promote lively hair growth, nor is it the world's safest hair dressing. It is not true that dandruff is the main cause of baldness.

The aforesaid representations of the respondent have had and still have a capacity and tendency to mislead and deceive, and have misled and deceived, and still mislead and deceive retailers and the purchasing public into the erroneous belief that said product of respondent has all the properties, capacities, or effects claimed for it by the respondent, as aforesaid, and the use of said misrepresentations causes them to purchase respondent's product in such erroneous belief. The aforesaid misrepresentations by the respondent have placed, and still place, in the hands of retailers of the product of respondent hereinabove described the means of deceiving and misleading the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of hair tonics and other preparations intended for use on the human hair and scalp who truthfully represent the properties, capacities, or effects of their said products.

By the representations made by the respondent, as set out hereinabove, trade has been and still is unfairly diverted to the respondent from such competitors and thereby substantial injury has been done, and still is being done, by respondent to competition in interstate commerce.

PAR. 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce 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 June 30, 1936, issued and subse-

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quently served its complaint in this proceeding upon the respondent, Kelly J. Shaddy, doing business as Magic Chemical Co., charging him 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, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski and Thomas H. Kennedy, attorneys for the Commission, before Charles P. Vicini, Henry M. White, and John J. Keenan, examiners of the Commission theretofore duly designated by it (no testimony or other evidence being introduced by the respondent): and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (no brief having been filed by the respondent and no oral argument having been requested): 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, Kelly J. Shaddy, is an individual doing business as Magic Chemical Co. He maintains his manufacturing establishment and principal place of business at 370 Turk Street, San Francisco, Calif. Respondent is, and for more than 2 years last past has been, engaged in the manufacture of a vegetable oil preparation for the treatment of the scalp and hair, and in the sale of said preparation under the trade name of "Shaddy's Hair Rejuvenator." During all of said time he has caused, and still causes, said product, when sold by him, to be transported from his place of business in California to purchasers thereof, some located in the State of California and others located at various States of the United States other than the State of California, and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in said vegetable oil hair preparation in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of his said business respondent is now, and for more than two years last past has been, in competition with other persons, firms, partnerships, and corporations engaged in the sale of hair tonics and other preparations intended for use on the human hair and scalp in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, described herein, respondent for more than 2 years last past has represented, and still represents, by means of radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, that when applied to the scalp and hair, his said product eradicates dandruff; takes care of the entire needs of the hair; continually helps keep the hair organs functioning normally in accordance with nature; stimulates perfect circulation, stops falling hair, promotes lively hair growth, and is the world's safest hair dressing.

Typical radio broadcasts advertising respondent's product are the following:

Shaddy's Hair Rejuvenator definitely and positively corrects dandruff, stops falling hair and stimulates and promotes the growth of hair.

Try Shaddy's Hair Rejuvenator! It will stop that falling hair and will induce new hair to grow to replace that which has fallen out!

Dandruff is the main cause of baldness. It clogs the hair follicles, destroys normal scalp circulation and prevents hair growth. Shaddy's Hair Rejuvenator gets at the very root of this trouble by eradicating dandruff and stimulating normal circulation. Shaddy's stops falling hair and restores beauty and lustre to the hair.

An advertising leaflet issued by respondent contained the following representations:

Try this most sensational Hair Invigorating and Rejuvenator of them all—Shaddy's. Dandruff eradicates hair, but Shaddy's eradicates dandruff. For many years Shaddy's has been the standard of Beauticians because it takes care of the entire needs of the hair—continually helps keep the hair organs functioning normally in accordance with nature; stimulates perfect circulation, eradicates dandruff and scabs, stops falling hair and promotes lively hair growth.

Respondent has distributed said pamphlet, advertising matter, and testimonials among his prospective customers and placed the same in the hands of his agents and distributors in various States of the United States for use by them in advertising his said product. Respondent has likewise represented that his said preparation is a hair rejuvenator and will rejuvenate the growth of hair, and that dandruff is the principal cause of baldness.

All of the aforesaid statements and representations on the part of the respondent are made in such a way that purchasers and prospective purchasers of respondent's preparations are led to mistakenly and erroneously believe that said preparation will cure, or relieve, any or all of the ailments and disorders above referred to and will accomplish the results claimed by respondent.

PAR. 3. An analysis of respondent's preparation made by a governmental agency shows that the preparation consists of cottonseed oil

with a small amount of oil of bay and capsicum added thereto. Based upon the testimony of expert witnesses, the Commission finds that said preparation is not a hair rejuvenator and will not rejuvenate the growth of hair. In order to rejuvenate hair or the growth of hair, it is necessary to change the old, senile cells to young cells and this cannot be accomplished by respondent's preparation. Said preparation will not permanently remove or eradicate dandruff. In truth and in fact, each and every representation made by the respondent, as above set out, is misleading and untrue. Respondent's said preparation does not take care of the entire needs of the hair and continually keep the hair organs functioning normally in accordance with nature, or stimulate perfect circulation. Said preparation does not stop or prevent falling hair or promote or bring about hair growth. It is not the world's safest hair dressing. Respondent's preparation will not fulfill any of the aforesaid claims made for it by respondent. Respondent's representation that dandruff is the principal cause of baldness is likewise untrue. Generally speaking, there are four types of baldness. One is the congenital type of loss of hair which begins in early childhood. The second is the premature type of baldness which is generally due to a family trait or predisposition. This type is often inherited from ancestors. The third type is the senile type, and the fourth is that type which is due to disease or infection. The majority of cases of baldness are not due to, or associated with, dandruff in any way. Preparations designed for application to the head in cases where there is an infection or disease of the scalp or skin are not valuable or beneficial unless they have incorporated in them a germicidal or antiseptic. There is no one preparation that will serve as a specific for all conditions or disorders of the scalp or hair. Such diseased conditions or disorders are very often due to some external infection, a low grade condition of the body generally, malnutrition, or other causes, many of which are not in any way beneficially affected by the application of a preparation of the character here involved.

PAR. 4. The aforesaid false and misleading representations on the part of respondent have had, and still have, the capacity and tendency to mislead and deceive, and have misled and deceived, retailers and members of the purchasing public into the erroneous belief that respondent's said preparation possesses the properties, capacities and beneficial values claimed for it by the respondent, as aforesaid, and into the purchase of respondent's preparation in and on account of such beliefs. In addition, the aforesaid misrepresentations on the part of the respondent place in the hands of retailers of said preparation a means of deceiving and misleading members of the purchasing public as to the true merits and properties of said product.

As a result thereof, trade has been diverted unfairly to the respondent and the retailers of respondent's preparation from competitors selling hair preparations in like commerce who do not falsely represent that their respective preparations will eradicate or permanently remove dandruff, or stop or prevent falling hair, or will accomplish the other results claimed by respondent for his preparation.

CONCLUSION

The aforesaid acts, practices and representations of respondent, Kelly J. Shaddy, trading as Magic Chemical Co., are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of 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, answer of the respondent, testimony and other evidence in support of the allegations of said complaint, and the brief filed in support of the complaint, respondent having not filed brief herein and having not requested oral argument, 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, Kelly J. Shaddy, an individual, doing business under the name Magic Chemical Co., or under any other name, in connection with the offering for sale, sale, and distribution of a vegetable oil preparation for use on the scalp, now designated as "Shaddy's Hair Rejuvenator," or of any other preparation containing substantially similar ingredients, or possessing substantially similar properties, whether sold under that name or under any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That said preparation eradicates or permanently removes dandruff;

2. That said preparation takes care of the entire needs of the hair, or stimulates perfect circulation, or plays any part in keeping the hair organs functioning normally;

3. That said preparation stops or prevents falling hair;

4. That said preparation will grow hair or promote or in any way bring about hair growth;

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5. That said preparation rejuvenates the growth of hair or is a hair rejuvenator;

6. That said preparation is the world's safest hair dressing;

7. That dandruff is the main cause of baldness.

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

Syllabus

IN THE MATTER OF
BLEECKER-FOSTER, INC.

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

Docket 2679. Complaint, May 22, 1936¹—Decision, June 23, 1938

Where a corporation engaged in sale and distribution of food flavors, novelties, and certain toilet preparations—

(a) Represented, in publications of general interstate circulation, that its salesmen, representatives, or dealers earned up to \$25 a day and secured very large numbers of new customers in specified period, through such statements as "I want 500 more men—to earn up to \$25.00 a day! Be a branch manager for George F. Foster," "C. Angel, of Milwaukee, secured 25,000 George F. Foster's customers in six months," "* * * In six months the G. F. Foster's fast-selling products and plan put Angel out of debt and established him in a business so big, so profitable, that it was almost unbelievable. Thousands of other G. F. Foster's agents, distributors and branch managers can tell similar stories of amazing earnings and success";

Facts being the average earnings of its salesmen, etc., in ordinary course of business under normal conditions, were less than the amounts thus represented as being earned;

With intent and effect of enabling it to make contacts with prospective dealers, representatives, or salesmen and persons who were seeking employment and who would purchase the commodity offered for sale by it and sold by it to such dealers, etc., with payment in full required before receipt by them for resale to the consuming public on their own account;

(b) Grossly misrepresented the values and regular selling prices of its products, through transmitting and delivering to its representatives, etc., commodities and merchandise under such plan of advertising as "Look! You can sell a \$6. Flash for only 99¢ and make 50¢ on every deal you hand out," and depicted in such connection a photostatic reproduction of a box containing a purported pearl necklace with a price tag of \$2.50 attached thereto, 3-ounce bottle of perfume, box of face powder, and jar of facial cream;

Facts being retail value of the necklace was approximately ten cents, and that of the other three items, twelve cents, eight cents, and fifteen cents, respectively; and

(c) Caused fictitious price marks, greatly in excess of the usual and customary retail prices for the products involved, to be affixed to other goods offered by it, including its "Jersey Maid Baking Powder," sold ordinarily by its representatives, etc., for 25 cents and price-marked 50 cents, and its "The Eternal Youth Crystals," sold customarily by it to its dealers, etc., for 24 cents and retailed by them for 75 cents, and price-marked \$1.50;

With effect of causing prospective dealers, representatives and salesmen, members of the purchasing public, to form the erroneous and mistaken belief

¹ Amended.