

IN THE MATTER OF
PRO-KER 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 2894. Complaint, Aug. 10, 1936—Decision, Aug. 31, 1938

Where a corporation engaged in distribution and sale of its "Pro-Ker" bottled liquid hair preparation, to and through wholesaler and drug store purchasers in other States, in substantial competition with others engaged in distribution and sale of kindred hair preparations in commerce among the various States and in the District of Columbia; in advertising its said product in newspapers and magazines of general circulation, and through advertising folders and literature circulated throughout the various States—

Represented that said "Pro-Ker" preparation was a competent treatment for falling hair, baldness, or any other hair trouble, which would grow hair or replace fallen with new hair, and prevent hair from falling out, and which got at the cause or root of all hair trouble and would correct, rid, end or cure any hair trouble or scalp disorder and force nature to replace fallen hair and produce new growth, and which would produce vital, healthy, and strong scalp and create perfect hair growing condition enabling user to have abundant healthy hair, through such statements as "Guaranteed Treatment Against Baldness," "No matter what your age. No matter how great your hair loss—whether you suffer from dandruff, oiliness, itchy scalp * * * guaranteed to replace every hair that falls from the first moment of use—and promptly to correct the secondary condition," "* * * produces a healthy scalp," "Today every man can be assured that he need not get bald," "* * * means the end of hair troubles," etc.;

Facts being preparation in question consisted mainly of water and emulsion of Glauber salts and fatty oils, said product contained nothing that had any effect in altering the normal physiological process of replacing falling hair, was not beneficial in prevention of baldness or loss of hair resulting from constitutional ailment, for which only treatment is one directed at ailment itself, nor competent treatment for any local condition of scalp causing falling hair or baldness, which, as local, may be due to variety of causes requiring different types of treatment, nor for dandruff, treatment of which is both local and internal, nor for excessive oil in hair, and it would not enable user to rid, end, correct, or cure any hair trouble or scalp disorder, force nature to replace fallen hair, or new growth, or make scalp vital, healthy, or strong, or create the perfect hair-growing condition, or make healthy abundant hair, and there was nothing in product in question, or combination of ingredients involved, that in any way affected the skin, its structures or appendages in such a way as to affect growth of hair;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial

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volume of its said preparation and trade was unfairly diverted to it from its competitors who truthfully advertise their products:

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

Before *Mr. John W. Addison* and *Mr. Miles J. Furnas*, trial examiners.

Mr. George Foulkes for the Commission.

Uniacke & Kelley, 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 Pro-Ker Laboratories, Inc., a corporation, 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 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. Respondent, Pro-Ker Laboratories, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 10 East Forty-ninth Street, New York City, N. Y. Respondent is now and has been for some time engaged in the business of distributing and selling in commerce, as herein set out, a treatment for the hair, designated as "Pro-Ker."

PAR. 2. Said respondent, being engaged in business as aforesaid, caused said treatment when sold to be transported from its office and place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade and commerce in said treatment, distributed and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of distributing and selling kindred preparations for treatment of the hair, in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of its business, and for the purpose of inducing individuals to purchase "Pro-Ker," respondent has caused

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advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Certain advertising matter used by respondent in literature and over the radio in making the representations concerning its product is herein set out as illustrative of said representations, but is not all-inclusive.

Such advertisements are as follows:

GUARANTEED TREATMENT AGAINST BALDNESS.

No matter what your age. No matter how great your hair loss—whether you suffer from dandruff, oiliness, itchy scalp—Pro-Ker is guaranteed to replace every hair that falls from the first moment of use—and promptly to correct the secondary condition.

We will refund every cent you paid for Pro-Ker if it does not at least retain the amount of hair now on your head.

Baldness, Charles Nessler tells us, is due to nature's failure to complete the hair-growing cycle—to replace hairs that fall—What PRO-KER does is to force nature to replace the fallen hairs with live, healthy hairs.

DANDRUFF, OILINESS, ITCHY SCALP.

These conditions, purely secondary, yield promptly to the application of PRO-KER. Stop baldness.

Pro-Ker is guaranteed to stop your hair loss from this moment on * * *

Pro-Ker gets at all hair trouble by getting at the cause.

DANDRUFF, THINNING HAIR, OILINESS, DRYNESS, cannot exist on a healthy scalp. Pro-Ker produces a healthy scalp.

If you want to save your hair—if you want to encourage the growth of new hair—if you want to rid your scalp of dandruff, dryness, itching, oiliness, start using Pro-Ker now.

Today every man can be assured that he need not get bald.

Pro-Ker * * * does for the scalp what milk does for the body—makes it vital, healthy, strong. And healthy hair must grow on a healthy scalp.

Pro-Ker means the end of hair troubles.

A New Hair-Law by Charles Nessler "Dandruff Cures" * * * Charles Nessler's Pro-Ker based on entirely new principles, will promptly relieve dandruff, excessive oil, and itchy scalp.

If you want abundant, healthy hair * * * start today to use Pro-Ker.

Baldness is not due to falling hair. It is due to nature's failure to complete the cycle and replace the hair that falls. In Mr. Nessler's scientific papers he distinguishes between falling hair and loss of hair. Falling hair is a normal function. Loss of hair occurs only when the falling hair is not replaced by new growth.

Pro-Ker * * * will encourage nature in normal function of hair replacement.

In all of its advertising literature, radio broadcasts, and testimonials, respondent represents, through statements and representations herein set out, and through statements of similar import and effect, that,

1. Its product is a competent treatment for baldness and other hair troubles;

2. That its product will replace falling hair or retain the amount of hair on the head at the time the use of said products has begun;

3. Its product gets at the cause or to the root of all hair trouble, or that it will "correct," "rid," "end," or "cure" any hair trouble or scalp disorders;

4. Its product will force nature to replace fallen hairs;

5. Its product produces a healthy scalp;

6. Its product will produce a new growth of hair;

7. Its product makes the scalp vital, healthy, or strong;

8. Its product creates the perfect hair growing condition, or that by its use one will have abundant healthy hair.

PAR. 4. Representations made by respondent with respect to the nature of its product when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said "Pro-Ker" treatment is not a competent treatment for baldness or any other hair trouble, nor will said product replace falling hair or cause the user to retain the amount of hair on the head at the time the use of said product is begun. Said product does not get at the cause or at the root of all hair trouble, nor will said product correct, rid, end, or cure any hair trouble or scalp disorders. Said product does not have the effect of forcing nature to replace fallen hairs, nor will said product produce a new growth of hair. Said product does not produce a healthy or strong scalp, nor does said product create the perfect hair growing condition. The use of said product does not promote abundant healthy hair.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth, in its advertising in newspapers, magazines, pamphlets, testimonials, and over radio broadcasts, in offering for sale and selling its product, had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further as a direct consequence of the mistaken and erroneous beliefs induced by the advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling hair treatments, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done, by

respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of respondent, have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and the 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 August 10, 1936, issued, and on August 11, 1936, served its complaint in this proceeding upon the respondent, Pro-Ker 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, testimony and other evidence in support of the allegations of the complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by Davis M. Zimmerman, attorney for respondent, before John W. Addison, an examiner of the Commission theretofore duly designated by it, 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 said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (respondent not having requested oral argument), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Pro-Ker Laboratories, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 400 Madison Avenue, New York City, N. Y. Respondent was incorporated in the year 1932. Charles Nessler was the first president of respondent corporation after its organization, and in or about the year 1933 the son of Charles Nessler, Charles George Nessler, became president and has occupied that office since that time.

Respondent, Pro-Ker Laboratories, Inc., is now, and has been since the date of its organization, engaged in the business of distributing and selling in commerce a treatment for the hair which respondent designates "Pro-Ker" or "Charles Nessler's Pro-Ker Hair Milk."

Said product is a bottled liquid which is manufactured by Allied Products, Inc., of Suffern, N. Y., according to formula supplied Allied Products, Inc., by respondent, Pro-Ker Laboratories, Inc. Allied Products, Inc., handles the assembling and packaging of the product at its place of business in Suffern, N. Y.

PAR. 2. The product, Pro-Ker or Charles Nessler's Pro-Ker Hair Milk, when sold, is transported by respondent from its office and place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent maintains a current of trade and commerce in said product distributed and sold by it between and among the various States of the United States and in the District of Columbia.

Respondent sells its product direct to the purchasing public in areas where it has no distributor. Respondent distributes its products through wholesalers and through drug stores, and does over a hundred thousand dollars worth of business annually.

Respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling kindred preparations for treatment of the hair in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, for the purpose of inducing individuals to purchase its product, has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the various States advertising folders and literature.

The following statements are illustrative of the representations respondent makes concerning its product, but not all-inclusive:

GUARANTEED TREATMENT AGAINST BALDNESS.

No matter what your age. No matter how great your hair loss—whether you suffer from dandruff, oiliness, itchy scalp—Pro-Ker is guaranteed to replace every hair that falls from the first moment of use—and promptly to correct the secondary condition.

We will refund every cent you paid for Pro-Ker if it does not at least retain the amount of hair now on your head.

Baldness, Charles Nessler tells us, is due to nature's failure to complete the hair-growing cycle—to replace hairs that fall—What PRO-KER does is to force nature to replace the fallen hairs with live, healthy hairs.

DANDRUFF, OILINESS, ITCHY SCALP.

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These conditions, purely secondary, yield promptly to the application of Pro-Ker. Stop baldness.

Pro-Ker 'is guarantee to stop your hair loss from this moment on * * *

Pro-Ker gets at all hair trouble by getting at the cause.

DANDRUFF, THINNING HAIR, OILINESS, DRYNESS, cannot exist on a healthy scalp. Pro-Ker produces a healthy scalp.

If you want to save your hair—if you want to encourage the growth of new hair—if you want to rid your scalp of dandruff, dryness, itching, oiliness, start using Pro-Ker now.

Today every man can be assured that he need not get bald.

Pro-Ker * * * does for the scalp what milk does for the body—makes it vital, healthy, strong. And healthy hair must grow on a healthy scalp.

Pro-Ker means the end of hair troubles.

A New Hair-Law by Charles Nessler "Dandruff Cures" * * * Charles Nessler's Pro-Ker based on entirely new principles, will promptly relieve dandruff, excessive oil, and itchy scalp.

If you want abundant, healthy hair * * * start today to use Pro-Ker.

Baldness is not due to falling hair. It is due to nature's failure to complete the cycle and replace the hair that falls. In Mr. Nessler's scientific papers he distinguishes between falling hair and loss of hair. Falling hair is a normal function. Loss of hair occurs only when the falling hair is not replaced by new growth.

Pro-Ker * * * will encourage nature in normal function of hair replacement.

In all of its advertising literature, respondent represents, through statements and representations herein set out, and through statements of similar import and effect, that,

1. Its product is a competent treatment for baldness and other hair troubles;

2. That its product will replace falling hair or retain the amount of hair on the head at the time the use of said products has begun;

3. Its product gets at the cause or to the root of all hair trouble, or that it will "correct," "rid," "end," or "cure" any hair trouble or scalp disorders;

4. Its product will force nature to replace fallen hairs;

5. Its product produces a healthy scalp;

6. Its product will produce a new growth of hair;

7. Its product makes the scalp vital, healthy or strong;

8. Its product creates the perfect hair growing condition, or that by its use one will have abundant healthy hair.

PAR. 4. Respondent's product is a milky, aqueous liquid with a lavender-like odor and a soapy taste. It is sold in 4-ounce, 8-ounce, and 16-ounce bottles. The product is about 98½ percent water, with 1½ parts Glauber salts, fatty oils, soap, oil of lavender, sulphonated oil, and traces of potassium, arsenic, and chloride. It has an ash residue of 0.31 percent of the total content. From the medical stand-

point, the product consists mainly of water and an emulsion of Glauber salts and fatty oils.

With each bottle of the product, respondent attaches a pamphlet upon which is set forth directions for the application of the product by the user. The liquid is self-administered, and the manner of its use is described by respondent as follows:

It consists of a thorough fine combing or brushing of the scalp daily followed by the application of the liquid in the bottle in turn followed by the removal of any excess liquid on the scalp with a towel. That completes the treatment—the one application of it.

PAR. 5. Hair is a growth as an appendage of the skin. The skin consists of three layers: The outermost part is the epidermis, beneath the epidermis is the corium also called the derma, and beneath the derma is a subcutaneous tissue or hydroderma. Hair makes its appearance in the embryonal or third month of fetal life in the form of a little budding from the derma cells. The small budding gradually develops and pushes its way down into the corium and forms the hair structure.

Hair will fall out as a result of the normal process of growth. Hair grows—then there is a rest period—then it falls out as another new hair is being formed underneath it. The process continues throughout life. This is the normal process. The testimony shows, and the Commission finds, that there is nothing in respondent's product that has any effect in altering the normal physiological process of replacing falling hair.

The abnormal process of growth and loss of hair results from a number of causes. Certain constitutional ailments or diseases oftentimes cause the abnormal loss of hair, or baldness. Diabetes, acute fevers, anemia, syphilis, meningitis, influenza, and tuberculosis are constitutional ailments of this type, and many cases of abnormal loss of hair or baldness are traceable to these ailments. The proper and only treatment for loss of hair resulting from these constitutional ailments must be directed to the treatment of the constitutional ailment itself. These conditions usually cause a temporary loss of hair, and if neglected may result in destruction of the hair follicle and permanent loss of hair.

The testimony shows, and the Commission finds, that respondent's product is not beneficial in the prevention of baldness or loss of hair resulting from a constitutional ailment.

Falling hair and baldness are also caused by local diseases of the scalp. These diseases may be ringworm, seborrhea, eczema, and favus, a disease produced by a vegetable parasite, and other chronic infectious conditions of the scalp. These local diseases may or may not destroy

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the hair follicle. Local conditions are treated locally, but in view of the fact that the scalp is a part of the general body, practically every scalp ailment or disease requires internal treatment. The testimony shows, and the Commission finds, that respondent's product does not have any effect on the skin, its structures or appendages in a manner as to affect the growth of hair, and, further, that the product is not a competent treatment for any local condition of the scalp, causing falling hair or baldness.

Other conditions, such as mechanical, chemical, or physical injury to the scalp, may cause a loss of hair. These conditions all demand different types of treatment, and the Commission finds respondent's product is not a competent treatment for any condition which causes loss of hair.

Dandruff is an abnormal formation, the principal symptom of which is the development of a scale resulting from the separation of the epidermal cells. It is recognized as whitish, grayish, or yellowish scaly particles on the scalp. The scales are developed by the rapid formation of epidermal cells, which cells under a microscope resemble and have the typical appearance of the normal stratum corium cells. In treating dandruff, an effort is made to bring back the normal state of the scalp. Treatment is both local and internal. Locally, the hygiene of the scalp is improved by removing the inflammation thereof. The Commission finds that the respondent's product is not a competent treatment for dandruff.

The hair does not contain any natural oil. The sebaceous glands secrete a fatty substance, sebum, which is produced by breaking down of the gland cells. The oil which is produced is discharged through ducts into the follicles and this oil lubricates and covers the hair. In cases where the amount of oil is excessive in the hair, patients are treated internally as well as externally. The Commission finds that respondent's product is not a competent treatment for excessive oil in the hair.

Respondent's product will not replace falling hair and will not cause the user to retain the amount of hair on his head at the time he began use of respondent's product. By using respondent's product, an individual will not "rid," "end," "correct," or "cure" any hair trouble or scalp disorder.

Respondent's product will not force nature to replace fallen hairs. Use of the product does not produce a healthy scalp or a new growth of hair. Use of the product does not make the scalp "vital," "healthy," or "strong."

Use of the product does not create the "perfect hair growing condition," or make healthy abundant hair

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There is nothing in any of the ingredients that make up respondent's product or a combination of these ingredients that in any way affects the skin, its structures, or appendages in a manner as to affect the growth of hair.

There are, among the competitors of respondent, corporations, individuals, firms, and partnerships likewise engaged in the business of distributing and selling, in interstate commerce, kindred preparations for the treatment of the hair who truthfully advertise their products.

PAR. 6. Each and all of the false and misleading statements and representations made by respondent, in its advertising in newspapers, magazines, and pamphlets, in offering for sale and selling its product, had, and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from its competitors who truthfully advertise their products.

CONCLUSION

The aforesaid acts and practices of respondent are all to the injury and 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, testimony, and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, 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 respondent, Pro-Ker Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with offering for sale, sale, and distribution of a hair preparation and treatment designated "Pro-Ker" and "Charles Nessler's Pro-Ker Hair Milk" or any product containing the same, or substantially the same ingredients sold under that name or any name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product:

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1. Is a competent treatment for falling hair, baldness, or any other hair trouble.
2. Will grow hair or replace fallen hair with new hair.
3. Will prevent hair from falling and will cause the user to retain hair.
4. Gets at the cause or to the root of all hair trouble, and will "correct," "rid," "end," or "cure" any hair trouble or scalp disorder.
5. Will force nature to replace fallen hairs and produce a new growth of hair.
6. Produces a vital, healthy, and strong scalp and creates the perfect hair growing condition, enabling the user to have abundant healthy hair.

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

Syllabus

IN THE MATTER OF

WILLIAM F. CRADDICK, INDIVIDUALLY, AND TRADING
AS N-URG-IZR, VIT-O-NET, AND ELECTRONETCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3333. Complaint, Feb. 10, 1938—Decision, Aug. 31, 1938*

Where an individual engaged in the manufacture of an electric blanket, or appliance in the nature thereof, under designations "N-Urg-Izr," "Vit-O-Net," "Electronet," and others, and in the advertisement, sale, and distribution thereof to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products and products intended and designed for similar use, and including those who do not in any way misrepresent the character and nature of their products nor effect thereof; in advertising and describing the same in booklets, pamphlets, circulars, and labels, and folders distributed among prospective purchasers, and in newspapers and magazines—

- (a) Represented, directly and by implication, that his said product was created and made for the practical application of the biological, chemical, and other scientific discoveries and theories of well known scientists and was the result of painstaking and long experience and tests, and that it set up a radio-magnetic energy which was transmitted to the person within or under its protection, and thus caused an increased activity and revitalizing of the organs and cells of the body, charged the blood stream with electro-magnetic energy, eliminated many times more poisons and waste matters than was possible by any other method, and caused a magnetic stimulation of the various cells of the human body with a resulting cure of any disease or ailment of which the person using the product might be suffering; and
- (b) Represented that said product was used, endorsed, and recommended by prominent and well known physicians, scientists, hospitals, educators, and other prominent and well known persons, and had been tested and endorsed by such persons and by institutions for medical and scientific research, that it was an amazing discovery which aided nature to eliminate wastes and poisons responsible for rheumatism, arthritis, high-blood pressure, kidney troubles, and nervousness, and that it had therapeutic value in all diseases known to man and created new energy, new vitality, and was wonderful for, and soothing to, the nerves;

Facts being said product did not produce any radio-magnetic or electro-magnetic energy which was transmitted to, or had any effect upon, the body, did not cause any results other than those which would be produced as a consequence of, and because of, the heat generated thereby, was not manufactured so as to make practical application of any scientific discoveries or theories of well known scientists as above set forth, was not used, endorsed, and recommended by prominent and well known physicians, etc., nor tested and endorsed thereby, nor an amazing discovery, and did not accomplish results as above set forth, and aforesaid representations were false;