

Syllabus

IN THE MATTER OF

FAN TAN COMPANY, INC., ALSO TRADING AS LOU RAY COMPANY, GRO PRES COMPANY, AND BISHOP JONES COMPANY

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

Docket 3352. Complaint. Mar. 9, 1938—Decision, Sept. 27, 1938.¹

Where a corporation engaged, under various trade names, in the sale and distribution of numerous cosmetics and preparations under brand names "Fan Tan," "Lou Ray," "Gro Pres," and "Bishop Jones"; in advertising and describing its said products through circulars, pamphlets, catalogs, newspapers, and other advertisements circulated generally throughout the United States, and by labels attached thereto—

- (a) Represented that various creams, powders, soaps, and lotions offered and sold under such various names would, as the case might be, end oily skin problems, melt into the pores, prevent blackheads and wrinkles, nourish and sterilize the skin, reduce enlarged pores, cause pimples to vanish, whiten the skin, and clear up and remove blemishes and correct skin eruptions and pimples; and
- (b) Represented that various hair preparations and products offered and sold by it under various brand names, as aforesaid, and including hair medicine, shampoo soap, so-called "hair grower," "Hot Oil Treatment," "Pomade," would, as the case might be, promote growth of longer, straighter hair, recondition the hair, vitalize scalp roots, get rid of, prevent, and end dandruff, clean hair roots, grow hair, rout cause of hair and scalp trouble, increase length of hair and make same longer, straighter, smoother, and softer, and end falling hair;

Facts being that aforesaid representations were extravagant, false, misleading, and deceptive, said various preparations would not cause or bring about the results nor produce effects claimed, either as to skin or hair, and were not efficacious in restoration and treatment of hair and skin and would not produce such results and did not have any beneficial value in treatment of various conditions for which they were represented as beneficial;

With capacity and tendency to mislead and deceive public into erroneous and mistaken belief that representations made by it were true, and that various products sold and distributed by it would actually accomplish the results claimed, and to induce a number of purchasing public to buy said products as result of such erroneous and mistaken belief, and with result that trade was diverted unfairly to it from competitors in commerce among the several States and in the District of Columbia, including many who do not in any manner misrepresent their products or the efficacy thereof:

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

¹ Order published as modified November 1, 1938.

Complaint

27 F. T. C.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Hickey, Hall & Junge and *Stanton & Stanton*, of Chicago, Ill., 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 Fan Tan Co., Inc., a corporation, also trading as Lou Ray Co., Gro Pres Co., and Bishop Jones Co., hereinafter designated as respondent, has been, and 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Fan Tan Co., Inc., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 212 South Franklin Street, in the city of Chicago, within the State of Illinois. The business conducted by the respondent is transacted and carried on, not only under the name of Fan Tan Co., Inc., but also under the name of Lou Ray Co., Gro Pres Co., and Bishop Jones Co. In the course and conduct of its said business, said respondent, Fan Tan Co., Inc., has been, and is now, engaged in the sale and distribution of numerous cosmetics and toilet preparations, which said preparations are designated under the brand names "Fan Tan," "Lou Ray," "Gro Pres," and "Bishop Jones." Said respondent has caused, and causes, its said cosmetics and toilet preparations, when sold, to be transported from its place of business located in the State of Illinois to purchasers thereof located at various points in the State of Illinois and in various other States of the United States and in the District of Columbia. Respondent maintains, and during the times herein mentioned has maintained, a course of trade in said cosmetics and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent, Fan Tan Co., Inc., is now, and has been for more than 1 year last past, engaged in substantial competition with other corporations, individuals, partnerships, and firms likewise engaged in the manufacture, sale, and distribution of cosmetics and toilet prepara-

tions in commerce between and among the various States of the United States and the District of Columbia, which said cosmetics and toilet preparations are used for purposes similar to the purposes for which respondent's cosmetics and toilet preparations are used.

PAR. 3. Respondent, Fan Tan Co., Inc., in soliciting the sale of, and selling, its various cosmetics and toilet preparations, in commerce as herein described, has made, and is making, by means of circulars, pamphlets, catalogs, newspaper, and other advertisements, circulated generally throughout the United States, and by labels attached to respondent's said preparations, many representations concerning the character and nature of its various cosmetics and toilet preparations, and concerning the results to be obtained from the use of said cosmetics and toilet preparations. Among said representations made by said respondent are the following:

That respondent's Fan Tan Liquifying Creme will end oily skin problems, melt into the pores, and prevent blackheads and wrinkles;

That respondent's Fan Tan Vanishing Creme will nourish the skin;

That respondent's Fan Tan Tissue Creme will prevent and correct wrinkles;

That respondent's Fan Tan Sarcoptic Mange Medicine will promote the growth of longer, straighter hair, will prevent dandruff, will recondition the hair, and will vitalize scalp roots;

That respondent's Medicated Shampoo Soap will sterilize the skin;

That respondent's Fan Tan Tar Shampoo will get rid of dandruff and will clean the hair roots;

That Fan Tan Astringent Lotion will reduce enlarged pores and reduce oiliness of the skin;

That respondent's Lou Ray Three-Fold Hair Grower will grow hair and supply nourishment to the hair;

That respondent's Lou Ray Medicated Hot Oil Treatment will "Rout the cause of hair and scalp trouble;"

That respondent's New Formula Lemon Creme will cause pimples to vanish, will bleach the skin, and will clear up blemishes;

That respondent's Wheel of Fortune will increase the length of the hair;

That respondent's Lou Ray Bleach Creme will bleach the skin, remove freckles, pimples, blotches, roughness, eruptions, and enlarged pores;

That respondent's Lou Ray Bleach Soap will bleach the skin;

That respondent's Gro Pres will grow hair and end dandruff and itchy scalp;

That respondent's Franko Pomade makes hair longer, straighter, smoother, and softer;

That respondent's Creme Shampoo, Hair Tinting Jet Black Shampoo, Lightweight Shampoo Soap, and Tinting Shampoo Soap will end dandruff and falling hair;

That respondent's Fan Tan Whitening Soap will whiten the skin, will remove skin blemishes, is healing, and corrects skin eruptions and pimples; and

That respondent's Fan Tan Bleach Creme is an effective remedy for pimples, blackheads, wrinkles, and all causes of rough, harsh skin.

Complaint

27 F. T. C.

Respondent has made many other representations of a similar or like nature concerning its said cosmetics and toilet preparations and the results obtained from the use thereof.

PAR. 4. In truth and in fact, the statements hereinabove in paragraph 3 set forth, and the various other representations of a like nature and character made by respondent in circulars, pamphlets, newspaper, and other advertising, and on labels attached to respondent's cosmetics and toilet preparations, as specified in paragraph 3 hereof, are, and each of them is, extravagant, false, misleading, and deceptive.

The use of respondent's cosmetics and toilet preparations will not bring about the results, nor produce the effects, claimed as to either the hair or skin.

Respondent's Fan Tan Liquifying Creme will not end oily skin problems, melt into the pores, nor prevent blackheads and wrinkles.

Respondent's Fan Tan Vanishing Creme will not nourish the skin.

Respondent's Fan Tan Tissue Creme will not prevent nor correct wrinkles.

Respondent's Fan Tan Sarcoptic Mange Medicine will not promote the growth of longer, straighter hair, nor will it prevent dandruff, recondition the hair, or vitalize the scalp roots.

Respondent's Medicated Shampoo Soap will not sterilize the skin.

Respondent's Fan Tan Tar Shampoo will not get rid of dandruff, nor will it clean the hair roots.

Respondent's Fan Tan Astringent Lotion will not reduce enlarged pores and reduce oiliness of the skin.

Respondent's Lou Ray Three-Fold Hair Grower will not grow hair, nor will it supply nourishment to the hair.

Respondent's Lou Ray Medicated Hot Oil Treatment will not rout the cause of hair and scalp trouble.

Respondent's New Formula Lemon Creme will not cause pimples to vanish, will not bleach the skin, and will not clear up blemishes.

Respondent's Wheel of Fortune Hair Dressing will not increase the length of the hair.

Respondent's Lou Ray Bleach Creme will not bleach the skin, will not remove freckles, pimples, blotches, roughness, eruptions, and enlarged pores.

Respondent's Lou Ray Bleach Soap will not bleach the skin.

Respondent's Gro Pres will not grow hair and end dandruff and itchy scalp.

Respondent's Franko Pomade will not make hair longer, straighter, smoother, and softer.

1011

Complaint

Respondent's preparations, Creme Shampoo, Hair Tinting Jet Black Shampoo, Lightweight Shampoo Soap, and Tinting Shampoo Soap, will not end dandruff and falling hair.

Respondent's Fan Tan Whitening Soap will not whiten the skin, will not remove skin blemishes, is not healing, and will not correct skin eruptions and pimples.

Respondent's Fan Tan Bleach Creme is not an effective remedy for pimples, blackheads, wrinkles, and all of the causes of rough, harsh skin.

The above named preparations and various other cosmetics and toilet preparations sold and distributed by the respondent are not efficacious in the restoration and treatment of the hair and skin, and will not produce the results claimed by respondent to be produced by the use of said products. Said preparations do not have any beneficial value in the treatment of the various conditions for which they are represented as being beneficial. In some instances, certain of respondent's preparations are injurious to the skin or scalp when used.

PAR. 5. The use by the respondent of the various representations set out in paragraph 3 hereof in describing the products sold by it, and in designating the efficacy of said products, through advertisements, circulars, pamphlets, catalogs, and other advertising literature in offering for sale, and selling, the products so advertised was, and is, calculated to, and had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the various products sold by said respondent will actually accomplish the results represented or claimed by the respondent, as set out in paragraph 3 hereof, upon the use of said products by the purchasers thereof. As a result of these mistaken and erroneous beliefs, brought about by the acts, practices, and representations of the respondent, as hereinabove outlined, a substantial portion of the purchasing public, especially that portion buying cosmetics and toilet preparations, has purchased a substantial volume of the products sold by the respondent, with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling cosmetics and toilet preparations intended for the same uses and purposes for which respondent's cosmetics and toilet preparations are intended, which said competitors truthfully advertise and represent the quality, character, and nature of their products. As a result thereof, substantial injury has been, and is now being, done by respondent to competition in commerce between and

Findings

27 F. T. C.

among the various States of the United States and in the District of Columbia.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and of competitors of the respondent, and constitute unfair methods of competition in commerce, within the intent and meaning 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 March 9, 1938, issued and, on March 11, 1938, served its complaint in this proceeding upon respondent Fan Tan Co., Inc., a corporation, also trading as Lou Ray Co., Gro Pres Co., and Bishop Jones Co., 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, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer 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. The respondent, Fan Tan Co., Inc., is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 212 South Franklin Street in the city of Chicago, in the State of Illinois. The respondent transacts and conducts business not only under the name of Fan Tan Co., Inc., but also under the names of Lou Ray Co., Gro Pres Co., and Bishop Jones Co. The respondent is engaged in the sale and distribution, under its various trade names, of numerous cosmetics and toilet preparations which said preparations are designated under the brand names "Fan Tan," "Lou Ray," "Gro Pres," and "Bishop Jones." Re-

spondent has caused and causes its said cosmetics and toilet preparations, when sold, to be transported from its place of business located in the State of Illinois to purchasers thereof located at various points in the State of Illinois and in other States of the United States and in the District of Columbia. The respondent maintains, and during the times herein mentioned has maintained, a course of trade in said cosmetics and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent, in the course and conduct of its said business, is now, and has been for more than 1 year last past, engaged in substantial competition with other corporations, and with individuals, partnerships, and firms likewise engaged in the sale and distribution of cosmetics and toilet preparations in commerce between and among the various States of the United States and in the District of Columbia, which said cosmetics and toilet preparations are used for purposes similar to the purposes for which respondent's cosmetics and toilet preparations are used. Respondent does not manufacture any of the products sold by it under its various trade names but limits its activities to the sale and distribution of said products which it purchases from various manufacturers.

PAR. 3. Under the brand name Fan Tan, the respondent sells and distributes the following products: Fan Tan Bleach Creme, Fan Tan Face Powder, Fan Tan Whitening Soap, Black Diamond Hair Dye, Franko Hair Dressing Remedy, Fan Tan Liquefying Cleansing Creme, Fan Tan Cold Creme, Fan Tan Vanishing Creme, Fan Tan Tissue Creme, Fan Tan Make-Up Creme, Fan Tan Brilliantine, Fan Tan Sarcoptic Mange Medicine, Fan Tan Medicated Shampoo and Bath Soap, Fan Tan Tar Shampoo, Fan Tan Cocoanut Oil Shampoo, Fan Tan Perfume, Fan Tan Deodorants, Fan Tan Hair Remover Powder, Fan Tan Talcum Powder, Fan Tan Hand Lotion, Fan Tan Astringent Lotion, Fan Tan Ointment, Fan Tan Toilet Water, Fan Tan Rouge Creme and Rouge Dry, Fan Tan Lipstick in four attractive kiss-proof shades, and Fan Tan Nail Polish and Remover.

PAR. 4. Under the brand name, Lou Ray, respondent sells and distributes the following products: Lou Ray Three-Fold Brilliantine Hair Grower, Lou Ray Wheel of Fortune Hair Dressing, Lou Ray Bleach Creme, Lou Ray Bleaching Soap, Lou Ray Liquid Brilliantine Pressing Oil, Lou Ray Creme Powder, Lou Ray Face Powder, Lou Ray Lemon Cleansing Creme, Lou Ray Jet Black Hair Dye Pencil, Lou Ray Creme Shampoo, Lou Ray Scalp Ointment, Lou Ray Hot Oil Treatment, Lou Ray Cake Shampoo, Lou Ray Jet Black Tint Shampoo, Lou Ray Special Jet Black Hair Dye, Lou Ray Hair Dressing (tube), Lou Ray Beauty Bleach Creme, Lou Ray Skin

Bleach Soap, Lou Ray Creme Deodorant, and Lou Ray Vision of Paradise Perfume.

PAR. 5. Under the brand name, Gro Pres, the respondent sells and distributes the following products: Gro Pres Hair Grower, Gro Pres Dandruff Remover Cake Shampoo, Gro Pres Mange Medicine, Gro Pres Creme Shampoo, Gro Pres Hair Tinting Jet Black Shampoo Liquid, Gro Pres Hair Tinting Jet Black Shampoo Cake, Gro Pres Scalp Ointment, Gro Pres Hot Oil Treatment, Gro Pres Jet Black Dye, Gro Pres Black Hair Dye Pencil, Gro Pres Bleach Creme, Gro Pres Neutral Face Powder, Gro Pres Skin Bleach Soap, Gro Pres Creme Deodorant, Gro Pres Lemon Cleansing Creme, Gro Pres Vision of Paradise Perfume, Gro Pres Pressing Oil, and Gro Pres Whitening Creme.

PAR. 6. Under the brand name, Bishop Jones, the respondent formerly sold and distributed a product under the name of Bishop Jones Hair Grower Treatment.

PAR. 7. Numerous products sold and distributed by the said respondent are the same products sold under different brand names. Gro Pres Dandruff Remover Cake Shampoo is the same product as the Lou Ray Dandruff Remover Cake Shampoo. The Gro Pres Creme Shampoo is the same as the Lou Ray Creme Shampoo. The Gro Pres Liquid Hair Tinting Jet Black Shampoo is the same as the Lou Ray Jet Black Tint Shampoo. The Gro Pres Scalp Ointment is the same as the Lou Ray Scalp Ointment. The hot oil treatments of the Gro Pres Co. and the Lou Ray Co. are the same. The Jet Black Dye of the Gro Press Co. is the same as the Special Jet Black Hair Dye of the Lou Ray Co. The Gro Pres Hair Dye Pencil is the same as the Lou Ray Hair Dye Pencil. The Gro Pres Bleach Creme is the same as the Lou Ray Bleach Creme. The Gro Pres Bleaching Soaps and the Lou Ray Bleaching Soaps are the same. The Gro Pres Creme Deodorant and the Lou Ray Creme Deodorant are the same. The Gro Press Pressing Oil and the Lou Ray Pressing Oil are the same. The Gro Pres Perfume and the Lou Ray Perfume are the same. The Fan Tan Mange Medicine and the Gro Pres Mange Medicine are the same.

PAR. 8. Respondent, in soliciting the sale of and selling its various cosmetics and toilet preparations in commerce, has made, and is making, by means of circulars, pamphlets, catalogs, newspapers, and other advertisements circulated generally throughout the United States and by labels attached to respondent's said preparations, many representations concerning the character and nature of its various cosmetics and toilet preparations and concerning the results to be obtained from the use of said cosmetics and toilet prepara-

1011

Findings

tions. Among said representations made by said respondent are the following:

That respondent's Fan Tan Liquifying Creme will end oily skin problems, melt into the pores, and prevent blackheads and wrinkles;

That respondent's Fan Tan Vanishing Creme will nourish the skin;

That respondent's Fan Tan Tissue Creme will prevent and correct wrinkles;

That respondent's Fan Tan Sarcoptic Mange Medicine will promote the growth of longer, straighter hair, will prevent dandruff, will recondition the hair, and will vitalize scalp roots;

That respondent's Medicated Shampoo Soap will sterilize the skin;

That respondent's Fan Tan Tar Shampoo will get rid of dandruff and will clean the hair roots;

That Fan Tan Astringent Lotion will reduce enlarged pores and reduce oiliness of the skin;

That respondent's Lou Ray Three-Fold Hair Grower will grow hair and supply nourishment to the hair;

That respondent's Lou Ray Medicated Hot Oil Treatment will "Rout the cause of hair and scalp trouble";

That respondent's New Formula Lemon Creme will cause pimples to vanish, will bleach the skin, and will clear up blemishes;

That respondent's Wheel of Fortune Hair Dressing will increase the length of the hair;

That respondent's Lou Ray Bleach Creme will bleach the skin, remove freckles, pimples, blotches, roughness, eruptions, and enlarged pores;

That respondent's Lou Ray Bleach Soap will bleach the skin;

That respondent's Gro Pres will grow hair and end dandruff and itchy scalp;

That respondent's Franko Pomade makes hair longer, straighter, smoother, and softer;

That respondent's Creme Shampoo, Hair Tinting Jet Black Shampoo, Light Weight Shampoo Soap, and Tinting Shampoo Soap will end dandruff and falling hair;

That respondent's Fan Tan Whitening Soap will whiten the skin, will remove skin blemishes, is healing, and corrects skin eruptions and pimples; and

That respondent's Fan Tan Bleach Creme is an effective remedy for pimples, blackheads, wrinkles, and all causes of rough, harsh skin.

Respondent has made and is making many other representations of a similar or like nature concerning its various cosmetics and toilet preparations and the results to be obtained from the use thereof.

PAR. 9. The representations hereinabove set forth in paragraph 8 and the various other representations of a like nature and character made by respondent in circulars, pamphlets, newspapers, and other advertising are, and each of them is, extravagant, false, misleading, and deceptive. The use of respondent's various cosmetics and toilet preparations will not cause or bring about the results nor produce the effects claimed as to either the hair or the skin.

Respondent's Fan Tan Liquifying Creme will not end oily skin problems, melt into the pores, or prevent blackheads and wrinkles.

Findings

27 F. T. C.

Respondent's Fan Tan Vanishing Creme will not nourish the skin.

Respondent's Fan Tan Tissue Creme will not prevent nor correct wrinkles.

Respondent's Fan Tan Sarcoptic Mange Medicine will not promote the growth of longer, straighter hair, nor will it prevent dandruff, recondition the hair, or vitalize the scalp roots.

Respondent's Medicated Shampoo Soap will not sterilize the skin.

Respondent's Fan Tan Tar Shampoo will not get rid of dandruff, nor will it clean the hair roots.

Respondent's Fan Tan Astringent Lotion will not reduce enlarged pores and reduce oiliness of the skin.

Respondent's Lou Ray Three-Fold Hair Grower will not grow hair, nor will it supply nourishment to the hair.

Respondent's Lou Ray Medicated Hot Oil Treatment will not rout the cause of hair and scalp trouble.

Respondent's New Formula Lemon Creme will not cause pimples to vanish, will not bleach the skin, and will not clear up blemishes.

Respondent's Wheel of Fortune Hair Dressing will not increase the length of the hair.

Respondent's Lou Ray Bleach Creme will not bleach the skin, will not remove freckles, pimples, blotches, roughness, eruptions, and enlarged pores.

Respondent's Lou Ray Bleach Soap will not bleach the skin.

Respondent's Gro Pres Hair Grower will not grow hair and end dandruff and itchy scalp.

Respondent's Franko Pomade will not make hair longer, straighter, smoother, and softer.

Respondent's preparations, Creme Shampoo, Hair Tinting Jet Black Shampoo, Light Weight Shampoo Soap, and Tinting Shampoo Soap, will not end dandruff and falling hair.

Respondent's Fan Tan Whitening Soap will not whiten the skin, will not remove skin blemishes, is not healing, and will not correct skin eruptions and pimples.

Respondent's Fan Tan Bleach Creme is not an effective remedy for pimples, blackheads, wrinkles, and all of the causes of rough, harsh skin.

PAR. 10. The various preparations sold and distributed by the respondent under the brand names Fan Tan, Lou Ray, Gro Pres, and Bishop Jones are not efficacious in the restoration and treatment of the hair and skin and their use will not produce the results claimed by the respondent in its advertising matter, as hereinabove set out, and said preparations do not have any beneficial value in the treat-

1011

Order

ment of the various conditions for which they are represented as being beneficial.

PAR. 11. The acts and practices of the respondent as herein set out have had, and now have, the capacity and tendency to mislead and deceive the public into the erroneous and mistaken belief that the representations made by the respondent are true and that the various preparations sold and distributed by the respondent will actually accomplish the results claimed, and to induce a number of the purchasing public to purchase said preparations as a result of said erroneous and mistaken belief. Among the competitors of respondent are many who do not in any manner misrepresent their products or the efficacy thereof and, as a result of the acts and practices of the respondent, as hereinabove set out, trade has been diverted unfairly to the respondent from its competitors in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged are all 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.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon a motion of respondent to modify the order to cease and desist issued herein on September 27, 1938, and the Commission having duly considered said motion and the record herein and being now fully advised in the premises.

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

It is ordered, That the respondent, Fan Tan Co., Inc., a corporation, also trading as Lou Ray Co., Gro Pres Co., and Bishop Jones Co., or trading under any other name, its officers, representatives, agents and employees, either directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of various cosmetic and toilet preparations now sold by it under various and sundry names in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparation now designated as Fan Tan Liquifying Creme or any other preparation composed of the same

or similar ingredients and possessing similar properties, under whatever name sold, will end oily skin problems, melt into the pores and prevent blackheads and wrinkles.

2. Representing that the preparation now designated as Fan Tan Vanishing Creme or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will nourish the skin.

3. Representing that the preparation now designated as Fan Tan Sarcoptic Mange Medicine or any other preparation composed of the same or similar ingredients and possessing similar properties will promote the growth of longer, straighter hair, will prevent dandruff, will recondition the hair and will vitalize scalp roots.

4. Representing that the preparation now designated as Fan Tan Medicated Shampoo Soap, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will sterilize the skin.

5. Representing that the preparation now designated as Fan Tan Tar Shampoo, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will get rid of dandruff and will clean hair roots.

6. Representing that the preparation now designated as Fan Tan Astringent Lotion, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will reduce enlarged pores and reduce oiliness of the skin.

7. Representing that the preparation now designated as Lou Ray Three-Fold Brilliantine Hair Grower, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will grow hair and supply nourishment to the hair.

8. Representing that the preparation now designated as Gro Pres Medicated Hot Oil Treatment and Lou Ray Medicated Hot Oil Treatment, or any other preparation composed of the same or similar ingredients or possessing similar properties, under whatever name sold, will "rout the cause of hair and scalp trouble."

9. Representing that the preparation now designated as Lou Ray Lemon Cleansing Creme and Gro Pres Lemon Cleansing Creme or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will cause pimples to vanish, will bleach the skin and will clear up blemishes.

1011

Order

10. Representing that the preparation now designated as Lou Ray Wheel of Fortune Hair Dressing or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, will increase the length of the hair.

11. Representing that the preparations now designated as Fan Tan Bleach Creme, Lou Ray Bleach Creme and Gro Pres Bleach Creme or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, are effective remedies for pimples, blackheads, wrinkles and all causes of rough harsh skin, and will remove freckles, pimples, blotches, roughness and enlarged pores.

12. Representing that the preparations now designated as Lou Ray Skin Bleach Soap, Gro Pres Skin Bleach Soap, Lou Ray Bleach Creme and Gro Pres Bleach Creme, or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will bleach the skin.

13. Representing that the preparation now designated as Gro Pres Hair Grower or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will grow hair and end dandruff and itchy scalp.

14. Representing that the preparation now designated as Franko Hair Dressing Remedy or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will make hair longer, straighter, smoother and softer.

15. Representing that the preparations now designated as Creme Shampoo, Hair Tinting Jet Black Shampoo, Light Weight Shampoo Soap and Tinting Shampoo soap or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will end dandruff and falling hair.

16. Representing that the preparation now designated as Fan Tan Whitening Soap or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, will whiten the skin and will remove skin blemishes, is healing and will correct skin eruptions and pimples.

17. And from making any other similar representations of like import or effect as to the beneficial value of said preparations or the benefits accruing from the use thereof.

It is further ordered, That the respondent, Fan Tan Co., Inc., shall, within 30 days after service upon it of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this modified order.

IN THE MATTER OF

NATHAN LEVIN, MAXWELL LEVIN, AND MORRIS W. LEVIN, INDIVIDUALLY AND TRADING AS 4-U COMPANY OF AMERICA

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

Docket 3476. Complaint, July 8, 1938—Decision, Sept. 27, 1938

Where a firm engaged in sale and distribution of citric acid, sodium citrate, lithium citrate, sodium tartrate, bottle crowns, and other products to dealers in the various States and in the District of Columbia, engaged in manufacture therewith of soda water and in bottling and capping same, and in sale thereof, as thus bottled and capped, in 24-bottle cases—

- (a) Supplied said bottle crowns, with numbers stamped inside thereon from 1 to 10 and 12 to 24, inclusive, and letter "U" in lieu of omitted number 11, for retailers' use in resale to consumer of bottled product composed of ingredients sold by it as aforesaid under scheme or plan by which chance purchaser securing bottle with number "4" or letter "U" crown was entitled to and did receive additional free bottle, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of said firm's products, in accordance with aforesaid plan or method, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or other method contrary to public policy, and refrain therefrom;

With result that many were attracted by said sales plan or method employed in sale or distribution of said firm's products because of element of chance involved therein, and were thereby induced to buy and sell said products in preference to those offered and sold by competitors who do not use such or equivalent plan or method, and trade was unfairly diverted to them from their competitors who do not so do; to the injury of competition in commerce among the various States and in said District; and

- (b) Made such statements, in advertising literature which they distributed and caused to be distributed in connection with retail sales of soda water made from products sold and distributed by them, as "Slenderizing," "Energizing," "Invigorating," "Alkalizing," "Energize with 4-U, that healthful drink," "For acid stomach," and "Will relieve acid stomach and lift hangovers," facts being product thus described was neither slenderizing, energizing, invigorating, alkalizing, or healthful, nor of any material benefit in the treatment of an "acid stomach," and would not combat the various manifestations of alcoholism which are referred to as "hang-overs";

With effect of misleading substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of their said products as a result thereof, and of thereby diverting unfairly to them trade from competitor manufacturers and distributors of like and similar products who do not publish in