

Complaint

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IN THE MATTER OF
PINAUD, INC.

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

Docket 3420. Complaint, May 12, 1938—Decision, Dec. 30, 1938

Where a corporation engaged in sale and distribution of its "Pinaud's Six-Twelve (612) Creme de Mascara" cosmetic to wholesale and retail dealers in various States for ultimate resale to purchasing public; in advertising the same in newspapers, periodicals, and other publications circulating among the various States and in the District of Columbia, and in circulars distributed to prospective purchasers as aforesaid—

Represented, directly and by implication, that use of said preparation would increase or promote growth of eyelashes and cause them to be longer, heavier, and of silkier quality, through such statement as " * * * Sums up all the things you want in an eyelash beautifier. It is * * * 6. Promotes eyelash growth. Its rich creaminess and smoothness is good for your eyelashes. It fosters a longer, heavier, silkier quality," facts being use thereof would not aid in growth of eyelashes or cause them to be longer, heavier, and silkier and said claims were inaccurate, incorrect, and exaggerated and not true statements of effectiveness of preparation in question;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and that its said preparation would accomplish results indicated, and of causing such portion of said public, because of said erroneous and mistaken beliefs, to buy substantial quantities thereof, and with result that trade was diverted unfairly to it from its competitors in commerce who truthfully advertise the effectiveness and use of their respective preparations; to the injury of competition in commerce:

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

Mr. Clark Nichols for the Commission.

Proskauer, Rose & Paskus, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Pinaud, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Pinaud, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 220 East Twenty-first Street in the city of New York, State of New York.

PAR 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a cosmetic, being one of the Pinaud Products more definitely designated as "Pinaud's Six-Twelve (612) Creme de Mascara." Respondent sells such preparation to wholesale and retail stores situated in the various States of the United States for ultimate resale to members of the purchasing public, and respondent causes the said preparation, once sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation so sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein, other individuals, firms, and corporations in various States of the United States have been, and are, engaged in the business of selling and distributing various preparations compounded and used for the same general purpose for which respondent represents its product, Pinaud's Six-Twelve (612) Creme de Mascara, to be effective, as herein set forth. Such other individuals, firms, and corporations have caused and do cause their said preparations, when sold, to be transported from their respective places of business in the various States of the United States, to, into, and through States other than the States of origin of the shipments thereof, to the respective purchasers thereof. In the course and conduct of its business of selling and distributing said preparation in commerce, as herein described, the respondent has been, and is now, in competition with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of its business of selling said preparation, Pinaud's Six-Twelve (612) Creme de Mascara, in commerce, as herein described, the respondent has caused and now causes statements and representations all to appear in newspapers, publications, bulletins, and on cards to which the preparation was attached, having an interstate circulation. In furtherance of the sale of such preparation, and to create a public demand therefor, the respondent, during the times mentioned herein, made or caused to be made, the

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following statements and representations in said advertising literature above referred to:

Six-Twelve (612) Creme de Mascara. The mascavelour. Dear Madam: Mascavelour sums up all the things you want in an eyelash beautifier. It is * * * 6. Promotes eyelash growth. Its rich creaminess and smoothness is good for your eyelashes. It fosters a longer, heavier, silkier quality.

The aforesaid statements, together with many others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public (1) that the use of said preparation grows eyelashes and promotes eyelash growth, (2) it fosters and brings about a longer, heavier, silkier quality to eyelashes.

PAR. 5. In truth and in fact, the use of the preparation, Pinaud's Six-Twelve (612) Creme de Mascara, will not grow eyelashes or promote eyelash growth. It will not foster or bring about a longer, heavier, silkier quality to eyelashes.

All of the statements and representations of respondent, as set forth herein, are grossly inaccurate, incorrect, and exaggerated, and are not true statements of the values to be derived from the use of Pinaud's Six-Twelve (612) Creme de Mascara, because this product does not and cannot cause the growth of eyelashes or eyebrows nor increase the growth of either of them.

PAR. 6. The statements and representations of respondent as set out herein, relative to the efficiency of the preparation, Pinaud's Six-Twelve (612) Creme de Mascara, have a tendency and capacity to, and do; confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken beliefs that the preparation, Pinaud's Six-Twelve (612) Creme de Mascara, when applied as directed, will accomplish the results for which said preparation is recommended and advertised as aforesaid, and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Thereby trade is diverted unfairly to respondent from its competitors, engaged in the sale and distribution of preparations designed for similar usage, who truthfully advertise the extent of the value of their respective preparations. In consequence thereof, injury has been done, and is being done, by respondent, to competition in commerce among and between the various States of the United States.

PAR. 7. 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 12th day of May 1938, issued and subsequently served its complaint in this proceeding upon said respondent, Pinaud, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 28th day of May 1938, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Proskauer, Rose, and Paskus, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Pinaud, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 220 East Twenty-first Street, in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a cosmetic designated as "Pinaud's Six-Twelve (612) Creme de Mascara." Respondent sells said preparation to wholesale and retail dealers situated in the various States of the United States for ultimate resale to members of the purchasing public and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in

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commerce in said preparation among and between the various States of the United States, and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals, selling and distributing preparations designed and intended for, and used for, the same purposes for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their respective preparations or their effectiveness in use.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation, respondent has caused advertisements, containing representations and claims with respect to the effectiveness in use of its said preparation, to be inserted in newspapers, magazines, and other publications having a circulation among and between the various States of the United States, and in the District of Columbia, and in circulars distributed to prospective purchasers of such preparation, situated in various States of the United States and in the District of Columbia. The said advertisements so used and disseminated contain the following statements and representations:

Six-Twelve (612) Creme de Mascara. The Mascavelour. Dear Madam: Mascavelour sums up all the things you want in an eyelash beautifier. It is * * * 6. Promotes eyelash growth. Its rich creaminess and smoothness is good for your eyelashes. It fosters a longer, heavier, silkier quality.

Through the use of the statements and representations hereinabove set forth, all of which purport to be descriptive of respondent's preparation and of its effectiveness in use, the respondent has represented, directly and by implication, that the use of such preparation will increase or promote the growth of eyelashes and will cause eyelashes to be longer, heavier, and of a silkier quality.

PAR. 5. In truth and in fact, the use of such preparation will not aid in the growth of eyelashes. The use of such preparation will not increase or promote the growth of eyelashes. The use of such preparation will not cause eyelashes to be longer, heavier, and of silkier quality.

The aforesaid claims of respondent as to the effectiveness in use of such preparations are inaccurate, incorrect, and exaggerated and are not true statements of the effectiveness in use of such preparation.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that

such false statements and representations are true and that respondent's said preparation will accomplish the results indicated and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations. In consequence thereof, injury has been, 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.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceedings, 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, Pinaud, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of an eyelash cosmetic now designated as Six-Twelve (612) Creme de Mascara, 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:

That the use of the preparation "Six-Twelve (612) Creme de Mascara" will increase or promote the growth of eye lashes or will cause eye lashes to be longer, heavier, or of a silkier quality.

It is therefore 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.

IN THE MATTER OF
ADOLPH WEIN DOING BUSINESS AS AMERICAN
TOY WORKS

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

Docket 3528. Complaint, Aug. 5, 1938—Decision, Dec. 30, 1938

Where an individual engaged in assembling, packing, selling, and distributing crayons, dolls, and toys to retailers and other purchasers for resale to members of purchasing public—

- (a) Included in descriptive legend set forth on labels of containers of crayons sold and distributed by him for resale by purchasers thereof to members of the purchasing public in various States and in District of Columbia, words "10 Hexagon Giant Crayons," notwithstanding fact crayons therein contained numbered only eight;
- (b) Made use of such words as "American Toy Works, New York, N. Y., U. S. A." in course and conduct of his business as aforesaid, and thereby represented that he was the manufacturer of merchandise dealt in by him as aforesaid, facts being he was merely an assembler of such merchandise and not manufacturer thereof, and did not own or control any such factory or plant for the purchase of the output of which, directly, there has long been preference on part of substantial portion of members of purchasing public as affording substantial savings as well as other advantages; and
- (c) Represented, through words and phrases aforesaid and such words and phrases as "Made in U. S. A., American Toy Works, New York, N. Y.," that the toys, dolls, and other merchandise dealt in by him were made by him as aforesaid and in the United States, facts being substantial number of units comprising toy sets which he sold and distributed were made in Japan and purchased by him from manufacturers' resident agents and thereafter assembled by him into toy sets which he sold and distributed, and were not domestic dolls and toys, long preferred by substantial portion of members of purchasing public to those made in a foreign country, and including Japan, and which, by reason thereof, substantial portion of such public refrained from buying;

With effect of misleading and deceiving substantial portion of such public into erroneous and mistaken belief that such statements and representations were true, and that packages aforesaid contained 10 crayons, and dolls and toys in question were made in the United States and it was the manufacturer thereof, and of causing substantial portion thereof, because of said erroneous and mistaken beliefs, to purchase substantial quantity of its said products, and with result that trade was thereby diverted unfairly to him from his competitors who truthfully advertise and represent the place of manufacture of their merchandise and their business status; to the injury of competition in commerce:

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

Mr. S. Brogdyne Tew II for the Commission.

Mr. David K. Kadane, of Silver Spring, Md., for respondent.