

IN THE MATTER OF
THE ENDURA CORPORATION

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

Docket 3419. Complaint, May 12, 1938—Decision, Jan. 31, 1939

Where a corporation engaged in sale of its "Endura" or "Endura Permanent Wave" beauty preparation to purchasers in other States and in the District of Columbia; in issuing, publishing, and circulating advertisements thereof among the various States through printed matter, radio broadcasts, and other ways—

(a) Represented that said cosmetic preparation had been tested in the world's foremost laboratories, and that it was used in Hollywood's major movie studios and by the screen's smartest stars; and

(b) Represented that it was actually good for the hair and would benefit bleached, dyed, gray, or naturally colored hair;

Facts being it contained nothing which was actually good for the hair or which would accomplish results aforesaid, and had not been tested and was not used as above claimed, and said representations were grossly exaggerated, false, misleading, and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all said representations were true, and with result, as direct consequence of mistaken and erroneous belief induced by said advertising and misrepresentation, that consuming public was caused by it to purchase substantial volume of said preparation, and trade was unfairly diverted to it from others engaged in sale of like or similar preparations intended for like and similar purposes, and who truthfully advertise their products; to the injury of competition in commerce;

Held, That such false and misleading representations, claims, and statements made as aforesaid were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce.

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Don F. Tyler, of Los Angeles, Calif., 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 Endura Corporation, 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:

Complaint

PARAGRAPH 1. Respondent, The Endura Corporation, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 4951 Sunset Boulevard, in the city of Hollywood, in the State of California. Respondent for more than 1 year last past has been and still is engaged in the sale of a certain beauty preparation known as "Endura" and sometimes designated "Endura Permanent Wave" which is sold for use by women as a self aid for the purpose of giving their hair permanent waves. In the course and conduct of its business, respondent offers said product for sale and sells the same in commerce between the State of California and the several States of the United States, and in the District of Columbia.

When said product is sold, respondent transports same from its place of business in the State of California to the purchasers thereof located in States of the United States other than the State of California, and in the District of Columbia. There has been for more than 1 year last past, and still is, a constant course of trade in said product so distributed and sold by respondent, in commerce between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the manufacture of like and similar products or other products designed for similar usage and in the sale thereof in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In soliciting the sale of and in selling its "Endura" of "Endura Permanent Wave" and for the purpose of creating a demand upon the purchasing public for said product, the respondent now causes, and for more than 1 year last past has caused, advertisements to be issued, published and circulated to and among the people of the United States in various forms of printed matter, by radio broadcasts, and in other ways. In said ways and by said means, respondent makes, and has made, to the general public false and misleading statements with reference to the alleged value and merit of said product and its alleged use in Hollywood major movie studios and by prominent screen stars. Among the statements so made and circulated by the respondent are the following:

Endura is actually good for the hair.

Tested in the World's foremost laboratories.

Used in Hollywood major movie studios.

Endura will actually benefit bleached, dyed, grey or naturally colored hair.

The screen's Smartest Stars use Endura.

Complaint

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PAR. 3. The statements and representations made by respondent, as above set forth, and others similar thereto, had and now have a tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of its product into the belief that "Endura" or "Endura Permanent Wave" is good for the hair and that it will benefit the hair; that it has been tested in the world's foremost laboratories; that it has been and is used in the major movie studios of Hollywood, and that it has been and is used by prominent movie stars.

PAR. 4. The representations made by respondent as aforesaid and others similar thereto, with respect to the nature and effect of its product when used are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, respondent's product does not contain anything which is actually good for the hair or which will actually benefit bleached, dyed, gray, or naturally colored hair. Said product has not been tested in the world's foremost laboratories. It has not been, nor is it now, used in the major movie studios of Hollywood. Nor is it true that the screen's smartest stars use it or have used it.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent herein by means of advertisements, radio broadcasts, and in other ways, and in offering for sale and selling the aforesaid preparation known as "Endura" and as "Endura Permanent Wave," were and are calculated to, and had and now have a tendency and capacity to mislead and deceive, and do 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 such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondent, as aforesaid, a number of the consuming public purchases a substantial volume of said preparation known as "Endura" and as "Endura Permanent Wave," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar preparations intended to be used for like and similar purposes, who truthfully advertise their preparations. As a result thereof, substantial injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 6. 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 May 12, 1938, issued and served its complaint in this proceeding upon the respondent, The Endura Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 7, 1938, the respondent filed its answer to the complaint in this proceeding admitting all the material allegations of fact set forth in said complaint and waiving therein all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer (respondent having waived all intervening procedure and further hearing as to the said facts); 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, The Endura Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business located at 4951 Sunset Boulevard in the city of Hollywood in said State.

PAR. 2. Respondent, for more than 1 year last past, has been and still is, engaged in the sale of a certain beauty preparation known as "Endura" and sometimes designated "Endura Permanent Wave." When such sales are made, respondent transports this product from its place of business in the State of California to the purchasers thereof located in the States of the United States other than the State of California and into the District of Columbia, causing a constant course of trade in said products so distributed and sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. There are in the United States other corporations, firms, partnerships, and individuals engaged in the sale of like and similar products or other products designed for similar uses and in the sale thereof in commerce between and among the various States of the

United States and in the District of Columbia, the respondent being in substantial competition with such other corporations, firms, and individuals.

PAR. 4. To advertise and create a consumer demand for its product, respondent now causes and for more than 1 year last past, has caused advertisements to be issued, published, and circulated to and among the States of the United States in various forms of printed matter, radio broadcasts, and in other ways, making statements, among others, as follows:

Endura is actually good for the hair.

Tested in the world's foremost laboratories.

Used in Hollywood's major movie studios.

Endura will actually benefit bleached, dyed, gray or naturally colored hair.

The screen's smartest stars use Endura.

PAR. 5. Respondent's product does not contain anything which is actually good for the hair, or which will actually benefit bleached, dyed, gray, or naturally colored hair; it has not been tested in the world's foremost laboratories; it has not been, nor is it now, used in the major movie studios in Hollywood; the screen's foremost stars do not use it nor have they used it; and such representations made by the respondent are grossly exaggerated, false, misleading, and untrue.

PAR. 6. Each and all of the false and misleading statements and representations made by respondent as aforesaid by means of advertisements, radio broadcasts, and in other ways in offering for sale and selling the aforesaid preparation were and are calculated and have had and now have the tendency and capacity to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the belief that all of said representations are true.

PAR. 7. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and misrepresentations, caused the consuming public to purchase a substantial volume of said preparation known as "Endura" and as "Endura Permanent Wave," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar preparations intended to be used for like and similar purposes, who truthfully advertise their products. As a result thereof, injury has been done and is now being done by respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

Order

CONCLUSION

The aforesaid false and misleading representations, claims, and statements made by 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 and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and waives the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Endura Corporation, its representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a cosmetic preparation now known as "Endurā" or as "Endura Permanent Wave," whether sold under those names or under any other names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

1. That respondent's cosmetic preparation has been tested in the world's foremost laboratories or that it is used in Hollywood's movie studios or by the screen's smartest stars.

2. That respondent's cosmetic preparation is actually good for the hair or will benefit bleached, dyed, gray, or naturally colored hair.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of service upon it of this order, file with this 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
THE KNOX COMPANY

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

Docket 3430. Complaint, May 20, 1938—Decision, Jan. 31, 1939

Where a corporation engaged in the manufacture, sale, and distribution of "Nixoderm" proprietary preparation to purchasers in various States and in the District of Columbia, in substantial competition with those engaged in sale and distribution of preparations designed and intended for and used in treatment of same ailments and conditions for which it recommended its said product, and including many who do not in any manner misrepresent their respective preparations or therapeutic properties thereof, and do not make any other false statements in connection with their sale and distribution; in advertising its said product, and results that might be expected from use thereof, in newspapers, magazines, and periodicals of general circulation throughout the United States, and through continuities broadcast from radio stations of extrastate audience—

Represented, through claims there made, that its said product was an effective remedy or cure for psoriasis, eczema, athlete's foot, itch, ringworm, pimples, acne, dandruff, corns, hives, scabies, and other disorders, ailments, and diseased conditions of the skin, irrespective of the cause or type of said disorders and ailments, or the condition thereof;

Facts being its said preparation was neither a specific remedy nor effective cure or treatment for acne and the various other diseased conditions of the skin enumerated in its advertising matter, irrespective of cause of disorder or condition thereof, it was not a remedy or effective treatment for any skin disorder that arises from or is associated with systemic disturbances, in which class of disorders and ailments of the skin expert and thorough diagnosis is necessary to ascertain cause or causes and proper treatment therefor; and also was not remedy or effective treatment for all skin ailments and disorders of surface character only, irrespective of type or condition, causes of which are so varied that no single formula containing any drug or a combination of drugs is capable of providing adequate treatment for all of such diseased conditions of the skin, irrespective of the etiological agent, the stage of the diseased condition, the nature of the skin affected, the age of the patient, and other pertinent conditions, circumstances, and causes, ascertainment of which, as responsible, is essential to ascertainment of proper treatment;

With effect of misleading and deceiving substantial portion of purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, by reason of such erroneous and mistaken beliefs, to purchase substantial quantities thereof, and of thereby diverting unfairly trade to it from its competitors who truthfully advertise the effectiveness in use of their respective preparations; to the injury of competition in commerce: