

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:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. William P. Jacobs, of Clinton, S. Car., and *Esch, Kerr, Taylor & Shipe*, of Washington, D. C., 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 Knox Co., 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. The respondent, The Knox Co., is a corporation doing business under the laws of the State of California. Its principal office and place of business are at 811 West Seventh Street, Los Angeles, Calif. It is engaged in the sale and distribution of a proprietary preparation for disorders of the skin called "Nixoderm."

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparation, when sold by it, to be shipped from its said place of business in Los Angeles, Calif., to the purchasers thereof, located in the various States of the United States, other than the State of California, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of like or similar proprietary products or other products designed and intended for similar usage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has advertised and now advertises in newspapers and magazines, by radio broadcasts and in various other ways that its said proprietary product is an effective remedy or cure for psoriasis, eczema, athlete's foot, and various other ailments, disorders, and diseased conditions of the skin. Representative of respondent's advertising claims for its said product are the following:

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Kill Itch Germs Quick.

* * * To stop the itch in 30 minutes and quickly heal your skin, just try the guaranteed prescription, Dr. Nixon's Nixoderm.

Guaranteed to quickly clear and heal your skin or money back on return of empty package.

Itch Cause Killed in 7 Minutes.

Your skin has nearly 50 million tiny seams or pores where tiny germs or parasites can hide and cause your skin to Itch, Crack, Peel, Burn, also Eczema, Ringworm, Pimples, Acne, Crotch-Itch and Foot Itch. Don't waste time with ordinary methods. You must have a penetrating treatment like the new discovery for stubborn skin troubles called Dr. Nixon's Nixoderm. It goes right in, kills the cause, and stops itch in 7 minutes. In 24 hours, you can see your face getting clear, soft, and smooth. Nixoderm is guaranteed to heal your skin in 10 days or money back on return of empty package. Ask your druggist for guaranteed Nixoderm today.

The aforesaid advertising claims for Nixoderm serve as representations on the part of respondent that said product is an effective remedy or cure for all type of psoriasis, eczema, athlete's foot, and other disorders, ailments, and diseased conditions of the skin.

PAR. 3. In truth and in fact, Nixoderm is not an effective remedy or cure for the various diseased conditions of the skin enumerated in respondent's advertising matter irrespective of the cause of the disorder or the condition thereof. Ailments and disorders of the skin arise from many causes and there is no specific remedy or treatment that is effective in all cases and under all conditions. Such ailments and disorders are, in many instances, caused by or associated with a systemic derangement and in order to effectively treat such cases it is necessary to ascertain the cause or causes of the diseased condition and treat such cause or causes together with the external manifestations thereof. A thorough diagnosis by a competent physician is necessary in order to determine the cause or causes of diseased conditions of the skin caused by or associated with a systemic derangement and the proper treatment therefor.

All diseased conditions of the skin that are of a surface character only and which have no systemic origin or connection cannot be effectively treated in the same way and by the same medicine. The proper method of treatment and the kind of medicine to be used in the treatment of diseased conditions of the skin that are of a surface character only are determined by many factors such as the age of the patient, type of skin of the patient, type of disorder from which the patient is suffering and the stage of the diseased condition. A proprietary medicine that might be effective in the treatment of a surface skin disorder while in its incipient stage might be wholly ineffective as a treatment for a disorder in a malignant stage. Furthermore, a proprietary medicine that might be effective in the

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treatment of skin disorders and ailments of infants is usually not strong enough to be effective in the treatment of skin disorders and ailments of adults and a proprietary medicine that might be an effective remedy for skin disorders of white people is usually not strong enough to be effective in the treatment of disorders suffered by persons of color.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said product on account of such erroneous belief.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the sale and distribution of remedies and treatments for the same ailments and diseased conditions of the skin listed in respondent's advertising matter who do not misrepresent the therapeutic values and other attributes of their said products. By use of the aforesaid representations, trade is diverted unfairly to respondent from its aforesaid competitors. As a result thereof, injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. 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 20th day of May 1938, issued and served its complaint in this proceeding upon said respondent, The Knox Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 30th day of June 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 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

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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. The respondent, the Knox Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri and having its principal office in the city of Los Angeles, State of California. Respondent is engaged in the business of manufacturing, selling, and distributing a proprietary preparation designated as "Nixoderm." The respondent's warehouse and manufacturing plant are located in the city of Buffalo, State of New York, from which location the respondent causes said preparation to be distributed by its sales agent, a partnership having the same name as respondent.

PAR. 2. The respondent is now and has been for more than 1 year last past engaged in the business of manufacturing, selling, and distributing said preparation. Respondent sells said preparation to members of the purchasing public situated in various States of the United States 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 in the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in commerce in said preparation between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce between and among 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 in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said

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commerce are many who do not in any manner misrepresent their respective preparations or the therapeutic properties thereof and who do not make any other false statements in connection with the sale and distribution of their respective preparations.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Nixoderm," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product "Nixoderm," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through the use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Said product was advertised, as aforesaid, until about the beginning of the year 1938, as an effective remedy or cure for eczema, psoriasis, itch, ringworm, pimples, acne, dandruff, corns, hives, scabies, athlete's foot, and various other ailments, disorders, and diseased conditions of the human skin.

Among and typical of the representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

Kill Itch Germs Quick.

* * * To stop the Itch in 30 minutes and quickly heal your skin, just try the guaranteed prescription, Dr. Nixon's Nixoderm.

Guaranteed to quickly clear and heal your skin or money back on return of empty package.

Itch Cause Killed in 7 Minutes.

Your skin has nearly 50 million tiny seams or pores where tiny germs or parasites can hide and cause your skin to Itch, Crack, Peel, Burn, also Eczema, Ringworm, Pimples, Acne, Crotch-Itch and Foot Itch. Don't waste time with ordinary methods. You must have a penetrating treatment like the new discovery for stubborn skin troubles called Dr. Nixon's Nixoderm. It goes right in, kills the cause, and stops itch in 7 minutes. In 24 hours, you can see your face getting clear, soft, and smooth. Nixoderm is guaranteed to heal your skin in 10 days or money back on return of empty package. Ask your druggist for guaranteed Nixoderm today.

The aforesaid advertising claims for Nixoderm serve as representations on the part of respondent that said product is an effective remedy or cure for psoriasis, eczema, athlete's foot, itch, ringworm, pimples, acne, dandruff, corn, 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.

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PAR. 5. In truth and in fact, Nixoderm is neither a specific remedy nor an effective cure or treatment for acne, psoriasis, eczema, pimples, dandruff, corns, and the various other diseased conditions of the skin enumerated in the respondent's advertising matter, irrespective of the cause of the disorder or the condition thereof. Ailments and disorders of the human skin, commonly referred to as "skin diseases" arise from many causes and are of two general classes; viz, those of a surface character only and those which are associated with, or arise from, a systemic disturbance. Among the disorders which are sometimes caused by systemic disturbances are eczema, acne, and psoriasis. Nixoderm is not a remedy or an effective treatment for any skin disorder that arises from or is associated with systemic disturbances. In all disorders and ailments of the human skin arising from or associated with systemic or organic disturbance, a thorough diagnosis by an expert is necessary in order to ascertain the cause or causes of the disorder or ailment and the proper treatment therefor.

Nixoderm is not a remedy or an effective treatment for all skin ailments and disorders which are of a surface character only, irrespective of the type or condition of such ailments and disorders. Not all diseased conditions of the skin that are of a surface character only, and which have no systemic origin or connection, can be treated effectively by the same method or by the same medicine. The proper method and the kind of medicine to be used in the treatment of diseased conditions of the skin that are of a surface character only are determined by many factors, the most important of which is the specific cause responsible for the disorder. These causes 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 and circumstances.

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations and advertisements, 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, representations and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial

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

CONCLUSION

The aforesaid acts and practices of 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 proceeding, 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, The Knox Co., a corporation, 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 a medicinal product now designated "Nixoderm" or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, whether sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation constitutes an adequate remedy or cure for acne, psoriasis, eczema, pimples, dandruff, corns, or any other ailment or disorder manifested by a diseased condition of the human skin, or constitutes a competent or effective treatment therefor, unless such representations are limited to those cases of such disorders and ailments which are of a surface character only and not caused by, or associated with, a systemic or metabolic disorder.

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2. Representing that said preparation constitutes an adequate remedy or cure for all cases of acne, psoriasis, eczema, pimples, or other skin ailments and disorders which are of a surface character only, or constitutes a competent and effective treatment therefor.

It is further 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.

TRU-VALU HOME SUPPLY

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