

IN THE MATTER OF

ROSE R. SCOTT, TRADING AS KOSKOTT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3575. Complaint, Sept. 3, 1938—Decision, Feb. 6, 1939

Where an individual engaged in sale and distribution of a line of hair preparations which were made for her and designated by numbers, and known as "Koskott" line; in advertising her said various preparations in magazines and newspapers of general circulation throughout the United States—

- (a) Represented, directly or by implication, that said products were effective cures for thin and falling hair, and that they constituted competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; and
- (b) Represented that they constituted competent cures for baldness, and that they would grow hair, and that growth could be expected to begin within a few days after use thereof, and that they were scientific remedies which stimulated the blood circulation and afforded nutrition to the hair roots, and that latter were rejuvenated and so affected as to cause hair to grow therefrom, and that preparation would impart a natural shade and color to the hair and succeed where other products failed;

Facts being said products were not effective cures for thin or falling hair, use thereof would not prevent same from falling out or being brushed or combed from the head, they were not competent cures for cause of dandruff or various other ailments and conditions set out, and would not accomplish above results claimed therefor, and did not stimulate blood circulation, etc., and would not succeed where others failed;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such false and misleading representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, that number of the purchasing public bought substantial quantity of her said products and trade was unfairly diverted to her from others likewise engaged in sale of preparations for the head and hair, and who truthfully represent their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. J. Bond Smith, 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 Rose R. Scott, trad-

Complaint

ing as Koskott Company, 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, Rose R. Scott, is an individual trading and doing business as Koskott Co., with her office and principal place of business at 223 West Thirty-third Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 10 years last past has been engaged in the business of distributing and selling a line of hair preparations known as "Koskott." Respondent causes said products when sold to be transported from her place of business in the State of New York to customers located in 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 hair preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, respondent is in active and substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of hair preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said hair preparations, respondent, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, has made many representations concerning the character and nature of said hair preparations and concerning the results obtainable from their use. Among said representations made by respondent are the following:¹

All of said statements, together with similar statements and advertising literature, purport to be descriptive of respondent's products and of their effectiveness in use. In all of her advertising literature and through other means, respondent directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents that said preparations are effective cures for thin or falling hair, and that the use thereof will prevent hair from falling out or being brushed or combed from the head; that

¹ The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of her said preparations, is also set forth in the findings, *infra*, at page 318, and for that reason is here omitted in the interest of brevity.

Complaint

28 F. T. C.

said preparations are competent cures for the cause of dandruff; that said preparations are competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; that said preparations are competent cures for baldness; that said preparations will grow hair; and that the growth of the hair can be expected to begin a few days after using said preparations; that said preparations are scientific remedies and will stimulate the blood circulation, and afford nutrition to the hair roots; that by using said preparations the hair roots are rejuvenated and so affected as to cause hair to grow therefrom; that the use of said preparations will impart a natural shade and color to hair; and that respondent's preparations succeed where others fail.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, and untrue. In truth and in fact, respondent's preparations are not effective cures for thin or falling hair and the use of the same will not prevent hair from falling out or being brushed or combed from the head. Said preparations are not competent cures for the cause of dandruff. Said preparations are not competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders. Said preparations are not competent cures for baldness, will not grow hair and the use of the same will not increase the length of the hair. Users of said preparations cannot procure a growth of hair within a few days or any other period of time from the use of said preparations. By using said preparations the blood circulation is not so stimulated as to afford nutrition to the hair roots. By using said preparations the hair roots are not rejuvenated and so affected as to cause hair to grow therefrom. Said preparations will not impart a natural shade and color to the hair. Respondent's preparations do not succeed where others fail.

PAR. 6. There are among respondent's competitors many who distribute and sell hair preparations who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in describing her hair products and their effectiveness when used, as hereinabove set out, were and are calculated to, and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from competitors who are engaged in the business of dis-

Findings

tributing and selling hair preparations, and who truthfully advertise and represent their respective products and the effectiveness thereof when used. As a consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices 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 September 3, 1938, issued and served its complaint, in this proceeding upon the respondent, Rose R. Scott, trading as Koskott Co., charging her with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of said act.

After issuance of said complaint, the respondent filed her answer thereto, admitting all the material allegations of fact set forth in said complaint and waiving hearing and all intervening procedure. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rose R. Scott, is an individual trading and doing business as Koskott Co., with her office and principal place of business at 223 West Thirty-third Street, New York, N. Y. Respondent is now, and for more than 10 years last past has been, engaged in the business of selling and distributing a line of hair preparations known as "Koskott" preparations, designated by numbers, all of which are manufactured for respondent, are sold and shipped by her to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of her business, respondent has been and is presently in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar

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

PAR. 2. In the course and conduct of her said business, respondent, in the sale of her various preparations and in inducing the public to purchase said preparations, has, by means of various advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, made statements and representations concerning the character and nature of said preparations and concerning the results obtained from their use. Among the said representations made by the respondent are the following:

SOME OF THE HIRSUTAL CONDITIONS WHEREIN KOSKOTT METHOD HAS PROVED HIGHLY EFFECTIVE.

Falling Out, or Combing Out of Hair.

Dandruff, otherwise known as seborrhea or scurf. A diseased condition of the scalp which must be remedied or all hair will be lost.

Hair Brushing Out. It sticks to the brush instead of remaining fast to the scalp, thereby proving the absolute need of prompt attention to save it.

Hair Falling in Patches. (*Alopecia Areata*.)

Hair Turning Gray—or already gray, or white. Should be darkened gradually to natural shade of youth * * *.

Thin Hair on Upper Lip, or no hair at all where a good mustache is desired.

Ringworm, Barbers' Itch, Little Pimples and other scalp disorders.

Baldness. In one large spot or in several places.

Hair Disappearing Mysteriously.

The above troubles are some of the most common conditions in which the Koskott Method is asserting its real merit.

* * * * *

Lovely Hair Growth. * * * This famous preparation * * * has often started hair growth in a few days.

* * * * *

Use Koskott To Grow Hair. Overcome Baldness. Eliminate Dandruff. Stop the Falling Out of Hair. Make the Hair Grow Long, Thick and Lustrous.

KOSKOTT IS A SCIENTIFIC SUCCESSFUL REMEDY

We recommend Koskott for the hair, because it * * * contains the right ingredients * * * to stimulate the direct blood nutrition of the hair, roots in their follicles. * * * It is exactly suited according to the best authorities and latest scientific trials, to eradicate dandruff, overcome the germs of baldness and promote all possible growth of new hair where such a result is therapeutically possible. * * * Research has revealed the cause of dandruff, etc., and the same light of knowledge has made possible the preparation, of the proper remedy. Koskott is guaranteed to remove the spores just described.

* * * The pharmacopela has been literally ransacked in Koskott Laboratory's successful search for a group of ingredients with the power to react through the scalp upon the blood circulation which feeds the hair follicles. Such is the formula for Koskott. That is why it "makes good" in so large a

Findings

percentage of cases. * * * Koskott tends to make the hair grow longer and more plentiful, or to promote hair growth where there has been baldness * * *. Koskott is aimed * * * to remedy the subnormal state inside by waking up the cells and tissues to renewed life. The arousing takes place because the therapeutical properties of Koskott consist of stirring up the circulation of the blood as the application is rubbed in. The circulation being thus restored, the hair roots in the scalp should be so revived as to push forth new hair growth. The follicles also gain strength to throw off any parasites that may nestle into the glands around the hair roots.

* * *
Dandruff, Thin or Splitting Hairs, Falling Hairs, Ordinary Baldness, need Koskott Nos. 1, 2, and 3.

Baldness in Patches, Ringworm, Barbers' Itch, Eczema on Scalp, require Koskott Nos. 2, 3, and 5 * * *.

* * * Your Hair Will Grow Again!

* * *
Why Others Fail and Koskott Succeeds.

* * *
Koskott No. 1 is the hair stimulator or feeder which gives timely aid to the hair shaft when it is visible above the scalp. * * * Koskott Method is efficacious in many cases where all else has failed.

Koskott to Encourage Hair Growth.

* * * This famous preparation is for dandruff, thinning hair, and hair loss preceding several forms of baldness * * *.

PAR. 3. The said statements, together with similar statements and representations, serve as representations to members of the purchasing public as properly descriptive of respondent's products and of their effectiveness in use. The use of such statements misleads members of the purchasing public into the erroneous and mistaken belief that respondent's products are effective cures for thin and falling hair; that the use thereof will prevent hair from falling out or being brushed or combed from the head; that said preparations are competent cures for the cause of dandruff; that said preparations are competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; are competent cures for baldness; will grow hair; that the growth of hair can be expected to begin a few days after using said preparations; that said preparations are scientific remedies and will stimulate the blood circulation, and afford nutrition to the hair roots; that the hair roots are rejuvenated and so affected as to cause hair to grow therefrom; said preparation will impart a natural shade and color to the hair; and will succeed where other preparations fail.

PAR. 4. The representations made by the respondent with respect to the nature and effect of the products when used are false and misleading in that respondent's preparations are not effective cures for thin or falling hair and the use of same will not prevent hair from

Order

28 F. T. C.

falling out or being brushed or combed from the head. Said preparations are not competent cures for the cause of dandruff. Said preparations are not competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders. Said preparations are not competent cures for baldness, will not grow hair on bald heads, and the use of same will not increase the length of the hair. Users of said preparations cannot procure a growth of hair within a few days of its use or any other period of time from the use of said preparations. By using said preparations the blood circulation is not so stimulated as to afford nutrition to the hair roots. By using the said preparations the hair roots are not rejuvenated and so affected as to cause hair to grow therefrom. Said preparations will not impart a natural shade and color to the hair. Said preparations will not succeed where others fail.

PAR. 5. Each and all of the false, misleading, and untrue representations made by respondent in offering for sale and selling her products were and are calculated to, and had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief, induced by the advertising and representations of the respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of preparations for the head and hair who truthfully advertise their products.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Rose R. Scott, trading as Koskott Co., as herein found, have been and are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and states that she waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and con-

314

Order

clusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent, Rose R. Scott, individually and trading as Koskott Co., or trading under any other name, her agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any of her cosmetic preparations now designated by the name Koskott, or any other cosmetic preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations, which advertisements, represent, directly or by implication, that said preparations will stop falling hair or prevent baldness, or will grow hair or have any effect on the growth of hair; that said preparations constitute a remedy or cure for dandruff, pimples, eczema, barbers' itch or ringworm, or other scalp disorders, or a competent or effective treatment for any of said conditions; that said preparations are of the highest medical, pharmaceutical or scientific efficiency; that said preparations will rejuvenate the hair roots or will stimulate the circulation, or will have any substantial beneficial effect on either hair roots or circulation; or that said preparations will impart a natural shade or color to the hair or will act in any manner other than as a hair dye.

It is further ordered, That the respondent shall, within 60 days after service upon her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

IN THE MATTER OF
EXCELSIOR LABORATORY, INC.

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

Docket 3648. Complaint, Nov. 8, 1938—Decision, Feb. 6, 1939

Where a corporation engaged in preparation, sale, and distribution of its so-called D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed and intended for and used in treatment of same ailments and conditions for which it recommended use of its said products, and including many who do not in any manner misrepresent their respective preparations or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution—

- (a) Represented in false advertisements which is disseminated and caused to be disseminated through the mails and in commerce and otherwise, directly and by implication, that vitamin E is the "Vitality Vitamin," and that, of all the elements discovered by science, none is so vital as said vitamin E, and that such vitamin had been added to its said "Garlic Tablets," and that use of its preparations could be relied upon to help maintain and improve muscle function, abdominal strength, and vital resistance;
- (b) Represented, as aforesaid, that use thereof stimulated the appetite and growth and strengthened intestines and toned up nerve system and fortified the system against the onslaught of old-age ailments and normalized glandular action;
- (c) Represented, as aforesaid, that use thereof purified the blood stream and supplied body building elements for mothers and growing children and minerals needed by the body, and gave results impossible to be had from garlic in any other form; and
- (d) Represented, as aforesaid, that use of said preparations constituted effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory, and general debility, and that they were antiseptics and guaranteed;

Facts being vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by science, the many ailments and symptoms for which it recommended its said preparations are caused by various physical disorders unrelated to deficiencies in the various ingredients of which it claims its preparations to be composed, and use thereof cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance, or to accomplish various other results above set forth, preparations in question are not antiseptics, many others give equally great beneficial results, it does not guarantee its preparations as to effectiveness in use, but its guarantee is limited to refund of purchase price, and its said representations were grossly exaggerated and misleading and constituted false advertisements, use of which induces or is likely to induce, directly or indirectly, purchase of its said preparations; and