

Complaint

28 F. T. C.

IN THE MATTER OF
DE KAMA, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3480. Complaint, July 9, 1938—Decision, Mar. 15, 1939*

Where a corporation engaged in sale and distribution of cosmetics with claimed therapeutic properties—

- (a) Represented, in printed advertising matter shipped and distributed in interstate commerce and used in connection with offer and sale of its said products, that they were of remedial or therapeutic value in the prevention or treatment of skin conditions or disorders because of the hormones or gland extracts therein contained, and that use thereof would nourish and rejuvenate the skin, prevent sagging or wrinkling thereof, and overcome effect of age on the skin and preserve the soft contour and firmness of youthful skin, and that its "Creme Harmonique" was designed, among other things, "to penetrate the outer skin and give new life to the subcutaneous cells;" and

- (b) Represented, as aforesaid, that said preparations, as the case might be, would beneficially affect the oil glands and pores of the skin and were of special value in correcting an oily, muddy type of skin, or shrunken and anemic skin, because of the hormones or gland extracts contained therein; Facts being hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts, its said products do not enable the users to retain or restore youthful contour and firmness, or the silky smooth texture of the skin, and will not, in any manner, rejuvenate skin and facial contours, and cannot produce the results represented and claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as direct consequence of such belief, that number of consuming public purchased substantial volume of its products and trade was diverted unfairly to it from its competitors who truthfully represent their respective preparations; to the injury of competition in commerce: Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. Jesse D. Kash for the Commission.

Mr. Peyton H. Moore, 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 De Kama, Inc., hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in 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, De Kama, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its principal office and place of business at 3255 Wilshire Boulevard in the city of Los Angeles, State of California. Respondent is now, and has been for some time last past, engaged in the business of selling and distributing cosmetics with claimed therapeutic properties.

PAR. 2. Respondent, in the course and conduct of its business, causes said products when sold to be transported from its principal place of business in the State of California to purchasers thereof located at various points in the several States of the United States other than the State of California. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products sold and distributed in commerce between and among the various States of the United States, in the District of Columbia, and in foreign countries.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for some time last past, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of selling and distributing cosmetics in commerce among and between 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 its said products, respondent has made, and makes, by means of printed advertising matter shipped and distributed in interstate commerce and used in connection with the offering for sale and sale of its said products, representations concerning said products and the results obtained from the use thereof. Among other things, the respondent represents and claims that certain of its cosmetics and preparations made or compounded under secret formula by impregnating its creams and preparations for human facial use with certain hormones or glandular extracts are scientifically sound preparations and have substantial medicinal and therapeutic value as preventives of aging, restoratives of youthfulness in, and nourishers of, the human skin. Specifically, some of the representations and claims so made are:

De Kama's principles were new to the cosmetic world—scientific, logical.

Therefore, it is only logical that the scientific way to overcome the effects of age is to incorporate these hormones which control tissue restoration and hence prolong youth into a fine face crème, the application of which would tend to produce the results that women are seeking.

Complaint

28 F. T. C.

In short, it is not enough merely artificially and temporarily to disguise the defects of the skin. The need is to preserve the skin's undertone, its soft, youthful contour and firmness, its silky, smooth texture; briefly—to attack directly the cause of aging and skin blemishes, to arrest for many years to come the merciless process of sagging and wrinkling * * * to make youthful loveliness of complexion immune to the ravages of time. De Kama Preparations are Created to Answer This Need.

De Kama Crème Hormonique, De Kama Crème Vi-Tavo, and De Kama Nature-Tone Crème make a complete group for the treatment of the skin in the scientific manner.

De Kama injected certain active hormone extracts, known only to himself, formulated and produced exclusively by him in his own laboratory, and which therefore cannot be duplicated. So was born the first complete organic beauty treatment in the world—the De Kama original Hormone Facial Preparations.

Crème Hormonique is created to revitalize those tiny, dormant glands within your skin and to make them glow again with their own youthful vigor.

De Kama Cream Hormonique is designed to penetrate the outer skin and give new life to the subcutaneous cells.

Crème Hormonique * * * This is the basic preparation in the De Kama Treatment Group. Its use is essential for all types and ages of skin. It embodies the De Kama active hormone principle previously outlined and combats aging by treating the cause. Its astonishing results have received world-wide acclaim.

Crème Hormonique is also intended to preserve and immunize the youthful charm of a skin that has not yet shown the cruel traces of fleeting time. De Kama Crème Hormonique is producing truly astonishing results. It fulfills its every promise and gives the lasting charm of a youthful complexion to the woman who uses it.

De Kama Creme Vi-Tavo contains a special De Kama Glandular Extract, plus certain elements of ripe avocados which are rich in vitamins.

De Kama Nature-Tone Creme aids the pores in regulating their flow of natural oil, and at the same time, assists the minute oil glands themselves. It contains a gland extract especially prepared for the oily, muddy type of skin.

De Kama Creme Hormonique Special contains a specific hormone extract for devitalized and anaemic skins. This creme is exceptionally beneficial for skins which are undernourished to a marked degree. It contains the same ingredients as Creme Hormonique.

De Kama-De-Kar Mone—De Kama's most recent masterpiece of rejuvenation * * * Contains a special De Kama hormone extract found to have a highly rejuvenative effect on these distressing skin conditions.

PAR. 5. The representations made by the respondent with respect to the character, nature, and effect of its products when used are grossly exaggerated, misleading, deceptive, and false. In truth and in fact, hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts, and respondent's products cannot produce the results represented and claimed. The use of respondent's products does not enable the users to retain or restore the youthful contour and firmness, or the silky smooth texture of the skin, nor will said products in any manner rejuvenate the skin and facial contours.

PAR. 6. There are among respondent's competitors many who make, sell, and distribute cosmetics who do not in any way misrepresent the effectiveness of their respective products.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in describing its 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 and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken 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 its competitors in said commerce, who truthfully represent their respective products. As a result 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 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 July 9, 1938 issued, and on July 15, 1938 served, its complaint in this proceeding upon respondent, De Kama, Inc., a corporation, 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 hearing 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 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

28 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, De Kama, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 3255 Wilshire Boulevard, in the city of Los Angeles, State of California. Respondent is now, and has been for some time last past, engaged in the business of selling and distributing cosmetics with claimed therapeutic properties.

PAR. 2. Respondent, in the course and conduct of its business, causes said products, when sold by it, to be transported from its principal place of business in the State of California to purchasers thereof located at various points in the several States of the United States other than the State of California. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products sold and distributed in commerce between and among the various States of the United States and in the District of Columbia and in foreign countries.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for some time last past, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing cosmetics in commerce among and between 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 purchasing of its said products, respondent has made, and makes, by means of printed advertising matter shipped and distributed in interstate commerce and used in connection with the offering for sale and sale of its said products, representations concerning said products and the results obtained from the use thereof. Among other things, the respondent represents and claims that certain of its cosmetics and preparations made or compounded under secret formula by impregnating its creams and preparations for human facial use with certain hormones or glandular extracts are scientifically sound preparations and have substantial medical and therapeutic value as preventives of aging, restoratives of youthfulness in, and nourishers of, the human skin. Specifically, some of the representations and claims so made are:

De Kama's principles were new to the cosmetic world—scientific, logical.

Therefore, it is only logical that the scientific way to overcome the effects of age is to incorporate these hormones which control tissue restoration and hence prolonged youth into a fine face creme, the application of which would tend to produce the results that women are seeking.

In short, it is not enough merely artificially and temporarily to disguise the defects of the skin. The need is to preserve the skin's undertone, its soft, youthful contour and firmness, its silky, smooth texture; briefly—to attack directly the cause of aging and skin blemishes, to arrest for many years to come the merciless process of sagging and wrinkling * * * to make youthful loveliness of complexion immune to the ravages of time. De Kama Preparations Are Created to Answer This Need.

De Kama Creme Hormonique, De Kama Creme Vi-Tavo, and De Kama Nature-Tone Creme make a complete group for the treatment of the skin in the scientific manner.

De Kama injected certain active hormone extracts, known only to himself, formulated and produced exclusively by him in his own laboratory, and which therefore cannot be duplicated. So was born the first complete organic beauty treatment in the world—the De Kama original Hormone Facial Preparations.

Creme Hormonique is created to revitalize those tiny, dormant glands within your skin and to make them glow again with their own youthful vigor.

De Kama Cream Hormonique is designed to penetrate the outer skin and give new life to the subcutaneous cells.

Creme Hormonique * * * This is the basic preparation in the De Kama Treatment Group. Its use is essential for all types and ages of skin. It embodies the De Kama active hormone principle previously outlined and combats aging by treating the cause. Its astonishing results have received world-wide acclaim.

Creme Hormonique is also intended to preserve and immunize the youthful charm of a skin that has not yet shown the cruel traces of fleeting time. De Kama Creme Hormonique is producing truly astonishing results. It fulfills its every promise and gives the lasting charm of a youthful complexion to the woman who uses it.

De Kama Creme Vi-Tavo contains a special De Kama Glandular Extract, plus certain elements of ripe avocados which are rich in vitamins.

De Kama Nature-Tone Creme aids the pores in regulating their flow of natural oil, and at the same time, assists the minute oil glands themselves. It contains a gland extract especially prepared for the oily, muddy type of skin.

De Kama Creme Hormonique Special contains a specific hormone extract for devitalized and anaemic skins. This creme is exceptionally beneficial for skins which are undernourished to a marked degree. It contains the same ingredients as Creme Hormonique.

De Kama-De-Kar Mone—De Kama's most recent masterpiece of rejuvenation * * * Contains a special De Kama hormone extract found to have a highly rejuvenative effect on these distressing skin conditions.

PAR. 5. The representations made by the respondent with respect to the character, nature, and effect of its products when used are grossly exaggerated, misleading, deceptive, and false. In truth and in fact, hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts and respondent's products cannot produce the results represented and claimed. The use of respondent's products does not enable the users thereof to retain or restore the youthful contour and firmness, or the silky smooth texture, of the skin, nor will said products in any manner rejuvenate the skin and facial contours.

Order

28 F. T. C.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing its 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 and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken 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 its competitors in said commerce who truthfully represent their respective products. As a result 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.

CONCLUSION

The aforesaid acts and practices of the respondent, De Kama, Inc., are 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.

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 it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, De Kama, Inc., a corporation, its representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cosmetic preparations in commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That any of said preparations is of any remedial or therapeutic value in the prevention or treatment of skin conditions or disorders because of the hormone or gland extracts in such preparation.

2. That the use of any of said preparations will nourish and rejuvenate the skin, prevent the sagging or wrinkling of the skin, overcome

1130

Order

the effect of age on the skin, or preserve the soft contour and firmness of the youthful skin.

3. That any of said products will penetrate the outer skin and affect the subcutaneous cells.

4. That any of said preparations will beneficially affect the oil glands and pores of the skin because of the hormone or gland extracts in said preparation.

5. That any of said preparations is of special value in correcting an oily, muddy type skin, or a shrunken and anemic skin, because of the hormone or gland extracts in such preparation.

6. That any hormone or gland extracts contained in such preparations are absorbed through the skin in a therapeutically significant amount.

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.

Complaint

28 F. T. C.

IN THE MATTER OF
GOOD HUMOR CORPORATION 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 3516. Complaint, July 28, 1938—Decision, Mar. 15, 1939

Where owner of patents covering subject matter of confections frozen on sticks or handle members, and engaged for short period in sale and distribution to licensees of wooden sticks and paper bags including certain assortments thereof which involved use of a lottery scheme when sold and distributed as frozen confections to consumers thereof, and included assortments in which 10-cent consumer-purchaser securing by chance "lucky stick" concealed in confection, was entitled, without cost, to additional bar—

Sold as aforesaid such assortments to dealers by whom such sticks and bags were employed in sale and distribution of their frozen confections or bars to their customers and awards made as above described, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products as above set forth, under aforesaid and similar plans, contrary to an established public policy of the United States Government and in violation of the criminal laws of several States and in competition with various manufacturers and distributors of such sticks and bags which, when used by retail dealers, do not constitute operation of game of chance, gift enterprise, or lottery scheme, and with many who make and sell various sticks and bags and devices for promoting or increasing sales of retail dealers and are unwilling to offer and sell their said products or devices so designed and arranged as above set forth or otherwise designed and arranged as to involve game of chance, lottery scheme, or gift enterprise and refrain therefrom;

With result that consuming public because of lottery scheme connected with its said sticks and bags was induced to deal with or purchase such frozen confections from dealers using its said devices, in preference to dealers using those of competitors, and dealers were thus induced to purchase its said sticks and bags in preference to devices of competitors, and substantial trade was thus unfairly diverted to it from its competitors aforesaid, and with capacity and tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude competitors who do not use same or equivalent or similar method involving same or equivalent or similar elements of chance, lottery scheme, or gift enterprise:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Daniel G. Albert, of Brooklyn, N. Y., 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