

IN THE MATTER OF
**HAROLD L. ROTHSCILD, TRADING AS CORONADO
MANUFACTURING COMPANY**

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

Docket 2829. Complaint, May 29, 1936—Decision, Apr. 11, 1939

Where an individual engaged in sale and distribution of cosmetics and toilet preparations among the various States, under a plan involving (1) the disposition of his products through distributors who were required to deposit \$300 and were then supplied with assortment of such products, together with thirty display cases to be placed in drug stores and other establishments, for sale of product on commission by proprietors of such stores and establishments, and (2) employment of supervisors who visited various cities and advertised at own expense, but with copy which he furnished, for distributors, in business and opportunity columns of local papers, and were paid by him commission of 25 percent on amount of business placed by them—

- (a) Represented through such advertising and through his said representatives or supervisors, that he had been established in business since 1923, and that a substantial demand had been established for his preparations, and exhibited letters setting forth high quality and salability of his said products, and represented that distributors would receive \$50 weekly with steady increase, and that they were earning from \$10 a day to \$5,000 a year, even without sales experience, and that least distributor would earn would be \$40 a week, and in some instances guaranteed minimum income of between \$3,000 and \$5,000 a year, and exhibited to applicants list containing names of those represented as receiving such amounts, and letters purporting to be from distributors showing their sale of large quantities of his said merchandise;

Facts being he established his business in 1933 and not in 1923, had not established substantial demand for his preparations, letters setting forth high quality and salability of his said products above referred to had been, in a number of such cases, presented to storekeepers for their signature when the goods were placed with them and before they had time to verify statements contained therein and later found such products not of high quality and with very little sale therefor, and distributors did not earn amounts as above alleged, and none had earned such amounts, but instead, in numerous cases, had suffered losses, and in some instances loss of entire investment, and in others loss ranging from \$165 to \$285, and, according to admission of supervisor, in no case had met with success or earned any substantial amount; and

- (b) Represented to applicants that supervisors would assist them in disposing of his merchandise, and that if applicants were unable to dispose thereof their money would be refunded upon its return to him, and informed applicants that after having made original purchase, they would be furnished with additional supplies of cosmetics and toilet preparations under profit-sharing plan, and that they would be given new and exclusive territory;

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Facts being said supervisors did not assist distributor in disposing of merchandise in question, and he failed and refused to make refund for any such merchandise thus returned, and refused in numerous instances to furnish distributors with additional products on profit-sharing basis after they had made original purchase, and territory assigned to distributors as new and exclusive in numerous instances had previously been worked by other distributors of said individual, with exclusive agency still held by some;

With result that some 300 distributors were secured as a result of such misrepresentations, and with effect of causing numerous persons to believe that such false and misleading representations made by said individual and his agents, as above set forth, were true, and to purchase said products in such belief in preference to like products sold in commerce among the various States by competitors, and of thus diverting trade to himself from competitors aforesaid:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Reuben J. Martin for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Harold L. Rothschild, trading under the name and style of Coronado Manufacturing Co., has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Harold L. Rothschild, is an individual trading and doing business under the name and style of Coronado Manufacturing Co. Said respondent maintains his office and place of business at 500 Robert Street in the city of St. Paul, in the State of Minnesota. Said respondent is now, and for more than one year last past, has been engaged in the sale and distribution of various cosmetics and toilet preparations between and among the various States of the United States. Said respondent causes said cosmetics and toilet preparations, when sold by him, to be transported to the purchasers thereof located in the State of Minnesota and in various other States of the United States. There is now, and has been for a long time, to wit, more than 1 year last past, a constant current of trade and commerce by said respondent in cosmetics and toilet preparations between and among the various States of the United States.

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In the course and conduct of his said business, said respondent is now, and for a long time, to wit, for more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with various other individuals, corporations, partnerships, and firms engaged in the interstate sale and distribution of cosmetics and toilet preparations.

PAR. 2. Said respondent, in the course and conduct of his said business, sells and distributes several lines of cosmetics and toilet preparations. Among the lines sold by said respondent are cosmetics and toilet preparations sold under the trade name "Coronet." Respondent also sells a more expensive line of cosmetics and toilet preparations under the trade name of "Lovely Lady," and still another higher priced line under the trade name of "Priscilla Parker." In the regular course and conduct of his business respondent sells the "Coronet" line of cosmetics and toilet preparations by three methods and to three different classes of dealers, namely, to drug and beauty supply jobbers and department stores; to retail druggists; and to distributors appointed by salesmen called supervisors.

PAR. 3. Said respondent for a long time, to-wit, for more than one year last past, in the course and conduct of his said business of selling the "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, has adopted a policy of advertising in the financial and business opportunity columns of daily newspapers for men with capital to invest to act as managers or other representatives, using in said advertisements false, misleading and deceptive statements (a) as to the size of said respondent's business, (b) as to the length of its establishment, (c) as to the equipment and cooperation furnished by said respondent, (d) as to opportunities offered, and (e) as to the possible and probable earnings or profits to be derived from the business operated and the money invested therein.

PAR. 4. Said respondent, for a long time, to wit, for more than one year last past, in the course and conduct of his said business of selling "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, has adopted the policy of entering into agreements, or seeking to enter into agreements, with individuals who apply for positions with said respondent as a result of the advertisements inserted in daily newspapers by said respondent, as set forth in paragraph 3 hereof, whereby said respondent purports to employ said applicants as managers and other representatives for said respondent in certain specified exclusive territories, and in consideration for such appointment the said applicants are required to purchase from said respondent a designated quantity of said "Coronet" cosmetics and toilet preparations, varying in number with the amount of capital said

applicants have to invest, and whereby said applicants are also required to agree to purchase from said respondent a designated number of said "Coronet" cosmetics and toilet preparations per month at a specified price with the understanding that said applicants, as managers or other representatives, shall cause said "Coronet" cosmetics and toilet preparations to be sold at a specified price; with the further understanding that if after offering the said "Coronet" line for sale in accordance with the instructions in the agreement, and after having carried out in full all of the provisions of the said agreement, the applicants may then secure additional quantities of said "Coronet" preparations on a profit sharing basis, or may return the supply of said "Coronet" preparations in their hands and receive a refund of the money paid therefor.

PAR. 5. Said respondent for a long time, to wit, for more than one year last past, in the course and conduct of his said business of selling the "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, in order to induce said applicants who answer advertisements of said respondent, as described in paragraph 3 herein, to enter into said agreements, and to purchase said "Coronet" line of cosmetics and toilet preparations from said respondent, as set out in paragraph 4 herein, has used and is now using false, misleading, and deceptive statements.

(a) As to the length of time it has been engaged in business.

(b) As to the demand for said "Coronet" line of cosmetics and toilet preparations.

(c) As to the possible and probable earnings or profits to be derived from the business operated and the money to be invested therein.

(d) As to the profits or earnings realized by other representatives of said respondent, and as to the success of other representatives of said respondent.

(e) As to many other important facts relating to the business being operated by said respondent.

PAR. 6. The aforesaid acts and things done and performed by said respondent has had and now has the tendency and capacity to mislead and deceive the general public, and particularly the said applicants who apply for positions as managers or other representatives of said respondent in response to said advertisements as set forth in paragraph 3 herein, into the belief that said respondent is an old established firm engaged in the sale and distribution of cosmetics and toilet preparations with substantial capital; that there is a substantial demand for said "Coronet" line of cosmetics and toilet preparations; that managers and other representatives of said respondent have made substantial profits and earnings in the sale of respondent's

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"Coronet" line of cosmetics and toilet preparations; that any man of good character, without experience, by the investment of a small amount of capital in said business, may make substantial profits or earnings within a short period of time; that letters of reference furnished by said respondent are bona fide, and that statements contained therein are true; that said applicants would be given exclusive territories where they would have no competition in the sale of said "Coronet" line of cosmetics and toilet preparations; that the money invested by said applicants or prospective managers or other representatives would be refunded upon the return of said "Coronet" line of cosmetics and toilet preparations purchased by them if said applicants or prospective managers or other representatives were unable to dispose of said "Coronet" line of cosmetics or toilet preparations; and that after the original purchase said applicants will be furnished additional supplies of the "Coronet" line of cosmetics and toilet preparations on a "profit sharing plan"; and in said belief said applicants have been and are now induced to purchase and enter into agreements to purchase the said "Coronet" line of cosmetics and toilet preparations from said respondent.

The truth and fact is that said respondent has been engaged in the sale of cosmetics and toilet preparations for a short time, to-wit, less than 5 years, and is a relatively small and unknown factor in the cosmetic and toilet preparation field; that there is a very limited demand for said "Coronet" line of cosmetics and toilet preparations on the part of the buying public; that the portfolio of letters of reference used by said respondent in the solicitation of the appointment of managers or other representatives contains statements which are not true in fact, and letters which are unauthorized; that there is keen competition in the sale of cosmetics and toilet preparations; that managers or other representatives of said respondent had not realized the substantial profits or earnings represented by said respondent as aforesaid; that the said respondent has not refunded and does not now refund the purchase price of said "Coronet" cosmetics and toilet preparations which said applicants, as managers or other representatives, were or are unable to sell, and which were or are returned to the said respondent; and that said managers or other representatives have not been and are not now furnished additional supplies of the "Coronet" line of cosmetics and toilet preparations on a "profit sharing plan."

PAR. 7. The aforesaid acts and things done and performed and representations made by said respondent have had and do now have the tendency to cause the various applicants or prospective managers or other representatives, acting in the belief that said representations

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are true, to enter into contracts or agreements for the sale of his products with said respondent rather than with other persons engaged in the interstate sale of cosmetics and toilet preparations, and thereby tends to divert trade to said respondent from his said competitors engaged in the interstate sale of cosmetics and toilet preparations.

PAR. 8. The aforesaid acts and things done and performed by said respondent, Harold L. Rothschild, trading and doing business as Coronado Manufacturing Co., are to the prejudice of the public and the respondent's competitors, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1936, issued and served its complaint in this proceeding upon the respondent, Harold L. Rothschild, individually and trading under the name and style of Coronado Manufacturing Company, charging him 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 thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly appointed by it. Respondent was not represented by counsel and introduced no testimony or other evidence in opposition to the complaint. The said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Harold L. Rothschild, is an individual trading under the name and style "Coronado Manufacturing Com-

pany." Since about January, 1933, respondent has been engaged in the sale and distribution of cosmetics and toilet preparations between and among the various States of the United States. His place of business during said period has been in St. Paul, Minnesota. In the course and conduct of his business respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of cosmetics and toilet preparations in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondent disposes of his product through distributors who are required to deposit \$300, whereupon they receive an assortment of respondent's products together with 30 display cases, and, in accordance with respondent's sales plan, they place said display cases containing the products of respondent, in drug stores and other establishments, the proprietors of which sell the products and receive a commission on such sales from the distributor. Respondent's annual sales amount to from \$50,000 to \$75,000.

PAR. 3. Respondent, in the course and conduct of his said business, employs supervisors who visit various cities throughout the United States and advertise in the Business and Opportunity columns of local daily newspapers for distributors of respondent's products. These supervisors pay their own traveling expenses and the costs of the advertisements, but the respondent furnishes the copy used in the advertisements. The supervisor is paid by the respondent a commission of 25 percent on the amount of business placed by him with the distributors.

PAR. 4. By means of advertising and through representations made by respondent's representatives known as supervisors, the respondent has represented that he has been established in business since 1923 and that a substantial demand has been established for his cosmetics and toilet preparations. By the same means the respondent has variously represented that distributors will receive \$50 weekly with steady increase; that distributors are earning \$10 a day to \$5,000 a year, even though they have no sales experience, and that the least the distributor would earn would be \$40 a week; and in some instances has guaranteed a minimum income of between \$3,000 and \$5,000 a year. Respondent further causes to be exhibited to the applicants a list containing the names of persons who are represented as receiving such amounts and also letters purporting to be from distributors showing they were selling large quantities of respondent's merchandise. It is also represented to applicants that respondent's supervisors would assist them in disposing of the merchandise, and that if the applicants were unable to dispose of the merchandise their

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money would be refunded upon the return of such merchandise to the respondent. Applicants are further informed that after having made the original purchase they would be furnished with additional supplies of cosmetics and toilet preparations under a profit sharing plan. The applicant is also told he would be given new and exclusive territory. Approximately 300 distributors located in various States throughout the United States were secured as the result of such representations.

PAR. 5. All of the representations referred to in the foregoing paragraph are false. In truth and in fact respondent established this business in 1933 and has not established a substantial demand for his preparations. Distributors do not earn the amounts which respondent alleges can be earned, nor have any of respondent's distributors earned the amounts which respondent alleges to have been earned. Numerous distributors instead of earning a profit have suffered substantial losses, in some instances the loss of the entire investment, and in others losses ranging from \$165 to \$285. One of respondent's supervisors admitted that none of said distributors had met with success in the sale of respondent's products or earned any substantial amount. Respondent's supervisors do not assist the distributor in disposing of this merchandise and respondent fails and refuses to make refund for any such merchandise returned by a distributor. In numerous instances respondent refused to furnish distributors with additional products on a profit sharing basis after they had made the original purchase. In numerous instances also the territory assigned to distributors as new and exclusive territory had previously been worked by other distributors of the respondent, some of whom still held the exclusive agency for such territory.

PAR. 6. The respondent, in order to induce persons to purchase his products and become distributors thereof, caused to be exhibited to them letters setting forth the high quality and salability of his said products. A number of said letters were presented to storekeepers for their signatures at the time the goods were placed with them and before they had time to verify the statements contained therein. Later, they found said products were not of high quality and that there was very little sale for them.

PAR. 7. The false and misleading representations made by the respondent and his agents, as hereinbefore set forth, have caused numerous persons to believe that said statements and representations are true, and to purchase such products in such belief in preference to like products sold in commerce between and among the various States of the United States by his competitors; and as a result, trade has been diverted from such competitors to the respondent.

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CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts, are to the prejudice and injury of the public and of respondent's competitors and constitutes unfair methods of competition in commerce in violation 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 respondent, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and briefs filed herein, 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, Harold L. Rothschild, individually and trading under the name and style of Coronado Manufacturing Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cosmetics and toilet preparations in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any sum required to be paid by any agent, representative or distributor will be refunded, unless such refund is actually made, and if there are any conditions connected with such refund, such conditions must be clearly and unequivocally stated in equal conspicuousness in immediate connection and conjunction with such offer of refund in such a manner that there is no deception as to the terms of such conditions.

2. Representing that he will furnish to distributors of his products additional goods on credit on a profit sharing basis unless such merchandise is actually furnished on credit to be paid for by the distributor out of the profits from the sale thereof.

3. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by his active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

4. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor for any

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given period of time which has not in fact been consistently earned net by such agent, salesman, representative or distributor in the ordinary course of business and under normal conditions and circumstances.

5. Representing that the territory assigned any agent, representative, or distributor is new or exclusive territory, unless new or exclusive territory is actually assigned to such agent, representative or distributor.

6. Representing that supervisors employed by the respondent will assist agents, representatives or distributors in the sale of said products when such is not the fact.

7. Representing by the use of false or fictitious testimonial letters or in any other manner that respondent's products have a salability which does not in fact exist.

8. Representing that respondent has been established in business for a long period of time or that a substantial demand has been established for his products when such is not the fact.

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

IN THE MATTER OF
JOSEPH ROSENFELD, INDIVIDUALLY, AND TRADING AS
RIGHTWAY INSTITUTE

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

Docket 3158. Complaint, June 19, 1937—Decision, April 11, 1939

Where an individual engaged, under name "Rightway Institute," in sale, under name "Rightway Method," of courses of instruction represented as treatment and cure for indigestion, heartburn and relief of gas, and in thus selling and distributing, under such various designations as "Rightway Method," "Relief Without Medication," and "Rightway Institute," books and pamphlets which purportedly contained system or method of exercising for the treatment of or relief from conditions above set forth, and in describing, in advertisements, magazines, newspapers, and other media circulated in the various States and in the District of Columbia and in books, pamphlets, circulars and letters distributed from his place of business through the mails and otherwise, his said method to purchasers or prospective purchasers in other States, in competition with many who make and compound various products and publish various books, pamphlets and treatises on methods designed and intended to relieve, cure or treat the various ailments or conditions similiar to those for which he represented his said method as relief or cure, and who do not, in thus selling and distributing their products and publications in commerce among the several States and in said District, in any way misrepresent their nature and character or their effectiveness or their true status as private business vendors—

- (a) Represented, directly or by implication, that his said system or method of exercising was a scientific way to relieve indigestion and stomach and intestinal gas, and that it would cure such ailments and conditions, and that it could be used with safety by all persons suffering therefrom, through such statements, among others, as "The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas," "Safe! and Sure!," "I can truthfully say that I am entirely cured from my old ailment that I had been troubled with for years," and "SCIENTIFIC GUARANTEED METHOD," and "STOP GAS PAINS"; and
- (b) Represented, through use of word "institute" in aforesaid trade name, which he featured, and through other statements including those hereinabove indicated, that his business was that of an institute or scientific research body conducted by graduate physicians and specially trained experts in physical culture, and that he maintained a trained technical staff of employees and a properly equipped laboratory for the conduct of scientific research and experiments as to use and effect of exercise in treatment and cure of aforesaid ailments and conditions, or that his said system or method of exercising was founded on, or the result of, such research and experiments;