

Syllabus

IN THE MATTER OF

J. PALAZZOLO

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

Docket 3062. Complaint, Feb. 16, 1937—Decision, Apr. 19, 1939

Where an individual engaged in offer and sale of various toilet preparations, including one known as "Otello Water" and "L'Acqua Otello," for head, scalp, and hair; in advertising his said product in circulars and folders and in the papers and other publications circulated throughout the United States, and by various broadcasts—

- (a) Represented said "L'Acqua Otello" or "Otello Water" as not a dye, but "a preparation which gives your hair a natural color and vitality," and "a miraculous water which regenerates the hair bulb and brings back vitality," and which "rejuvenates the roots of the hairs, thus bringing back the natural color of the hair and vitality," and "restores gray hair to its natural color or vitality," facts being said product was a dye, contained in equal quantities ingredients which are constituent parts of similar hair dyes known and advertised as such, was not in any sense a miraculous water, and did not have what could be termed in any sense water as a component part, and would not rejuvenate the roots or bulbs of the hair or give hair a natural color and vitality, or restore natural color to gray hair; and
- (b) Represented that said preparation ended and destroyed dandruff and stopped it and baldness and falling hair, and restored to its natural color or vitality gray hair, facts being it was not an effective cure for falling hair and dandruff and would not end latter and baldness and stop falling hair and destroy dandruff, nor give hair a natural color and vitality, or produce any new hair, and representations made by him with respect to nature and effect of his product were false and misleading;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by his said advertising and representations as above set forth, that substantial number of purchasing public bought substantial quantities of his said product and trade was unfairly diverted to him from others engaged in like and similar business and in sale of preparations for head and hair, and who truthfully advertise their products:

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

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

Mr. Merle P. Lyon for the Commission.

Mr. George G. Lake, of New York City, for respondent.

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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 J. Palazzolo, an individual, of New York City, N. Y., has been and now 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 thereof will be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. Palazzolo, is an individual trading as J. Palazzolo, with his office and principal place of business located at 436 East Fourteenth Street, New York City, State of New York. Respondent is now, and has been for several years last past, engaged, among other things, at said location, in the manufacture and sale of a hair dye for use in the dyeing of white or gray hair, which he designates and has designated "Otello Water" and also "L'Acqua Otello." He sells said product directly to the consumers and also to druggists, who in turn sell the same directly to consumers. Respondent's method of sale is usually through the mails.

In the course and conduct of his business respondent ships, or causes to be shipped or transported, his said product when so sold from the State of New York to said purchasers thereof located in points in various States of the United States other than the State of New York. There is now, and has been during all of the times herein mentioned, a constant current of trade in commerce of said product so sold by said respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling or offering for sale to the general public, hair dyes and compounds used for the purpose of dyeing white and gray hair, in the manner set out in paragraph 1 hereof, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business as aforesaid, respondent, in soliciting the sale and in selling said product, has advertised the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter, and by and through

the use of photographs and other pictures and on labels attached to, and in circulars inclosed in, the boxes or containers thereof. In, by, and through each and all of the advertising media above enumerated respondent has made and is making, expressly or by implication, the following statements or representations:

(a) L'Acqua Otello is not a dye but is a preparation which gives your hair a natural color, vitality.

(b) Otello Water for gray hair is not a tincture but a compound that restores gray hair to its natural color.

(c) It (Otello Water) ends dandruff, baldness.

(d) Otello Water is not a dye but a miraculous water which regenerates the hair bulb and brings back vitality.

(e) Otello Water destroys dandruff, stops falling hair.

(f) Otello Water for white hair is not a dye.

(g) Otello Water restores gray hair to its natural color or vitality.

(h) Otello Water rejuvenates the roots of the hairs thus bringing back the natural color of the hair and vitality.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that:

(a) "Otello Water" or "L'Acqua Otello" is a dye.

(b) The use of "Otello Water" will not restore gray hair to its natural color or vitality.

(c) The use of "Otello Water" does not regenerate the hair bulb.

(d) The use of "Otello Water" does not end dandruff or baldness or affect the same beneficially.

(e) The use of "Otello Water" does not stop falling hair.

(f) "Otello Water" is not a miraculous water. It is not a water at all and it is a misnomer to call it a water. It is in fact a typical lead and sulphur hair dye.

(g) "Otello Water" for white hair is a dye.

(h) "Otello Water" does not restore gray hair to its natural color or vitality.

(i) The use of "Otello Water" does not rejuvenate the roots of the hair and does not bring back the natural color of the hair and vitality.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have, and have had, the tendency and capacity to induce the members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's products, thereby unfairly diverting trade to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

PAR. 6. The above alleged acts and practices are each and all to the prejudice of the public and of 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 February 16, 1937, issued and thereafter served its complaint in this matter upon respondent Joseph Palazzolo, individually and trading as J. Palazzolo, charging him with 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 complaint were introduced by Merle P. Lyon, attorney for the Commission, and by respondent on behalf of himself, before John J. Keenan, an examiner of the Commission theretofore duly designated by it. All of said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Joseph Palazzolo, trading under the trade name and style of J. Palazzolo, with his principal place of business at 436 East Fourteenth Street, New York City, N. Y., has been engaged in the business of offering for sale and selling various toilet preparations, among which is a preparation known as "Otello Water" and "L'Acqua Otello," a preparation, for use on the head, scalp and hair. Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of New York to purchasers thereof at respective points of location in various States of the United States other than in the State of New York. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships, corporations and other firms or individuals also engaged in the sale and distribution of like and

similar preparations in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of the said preparations dealt in by him and in particular "Otello Water," also known as "L'Acqua Otello," and in selling and distributing same 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 the daily newspapers and other publications circulated throughout the United States and by various radio broadcasts, made statements and representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among the said representations made by respondent are the following:

(a) L'Acqua Otello is not a dye, but is a preparation which gives your hair a natural color and vitality.

(b) Otello Water for gray hair is not a tincture but a compound which restores gray hair to its natural color.

(c) It (Otello Water) ends dandruff and baldness.

(d) Otello Water is not a dye but a miraculous water which regenerates the hair bulb and brings back vitality.

(e) Otello Water Destroys Dandruff; stops falling hair.

(f) Otello water for white hair is not a dye.

(g) Otello Water restores gray hair to its natural color or vitality.

(h) Otello Water rejuvenates the roots of the hairs, thus bringing back the natural color of the hair and vitality.

PAR. 3. The aforesaid statements by the respondent, together with statements of similar import and meaning not herein set out but disseminated as aforesaid, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid respondent represents directly and by implication that such preparation is an effective cure for dandruff and falling hair, will give the hair a natural color and vitality, restores the natural color to gray hair, ends dandruff and baldness, destroys dandruff and stops falling hair, rejuvenates the roots of the hair and thus restores the natural color and vitality to the hair, and that such preparation is not a dye but is a miraculous water which rejuvenates the hair bulb and brings back vitality to the hair.

PAR. 4. The representations made by the respondent with respect to the nature and effect of the product when used are false and misleading in that the respondent's preparation is not an effective cure for dandruff and falling hair. Said product will not give the hair a natural color and vitality. Said product will not restore the natural color to gray hair; will not end dandruff and baldness;

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destroy dandruff, and stop falling hair. Said product will not rejuvenate the roots of the hair and thus restore the natural color and vitality to the hair. Said preparation is a dye and not a miraculous water which rejuvenates the hair bulb and brings vitality back to the hair. The formula for the said preparation contains, among other things, precipitated sulphur and lead acetate in equal quantities, which ingredients are constituent parts of similar hair dyes that are known and advertised as hair dyes. The said preparation is not in any sense a miraculous water. The only liquid ingredients in said preparation are glycerin and bayrum, and therefore it does not have what can be termed in any sense water as a component part. Users of said preparation will not have the roots or bulbs of the hair rejuvenated; will not secure a natural color and vitality of the hair; will not end dandruff and baldness, and will not stop falling hair or produce any new hair. The said preparation is in truth and in fact a hair dye.

PAR. 5. Each of the false, misleading, deceptive, and untrue representations made by respondent in offering for sale and selling his product 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 substantial number of the purchasing public have purchased a substantial quantity of said product, with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships engaged in like and similar business and in the sale of preparations for the head and hair, who truthfully advertise their products.

CONCLUSION

The acts and practices of the respondent herein, as set out in the foregoing findings as to the facts, 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 provisions 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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in

support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Merle P. Lyon, counsel for the Commission, and by George G. Lake, counsel for the respondent, 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, Joseph Palazzolo, individually and trading as J. Palazzolo, or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of the hair and scalp lotion or preparation now designated by the names "Otello Water" and "L'Acqua Otello," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under those names or under any other names, do forthwith cease and desist from:

1. Representing that said preparation is not a dye or is other than a dye.

2. Representing that the use of said preparation will restore the natural color to the hair, regenerate the hair bulb, restore vitality to the hair or rejuvenate, invigorate, or nourish the roots of the hair.

3. Representing that said preparation is a cure or remedy for dandruff or will destroy dandruff.

4. Representing that the use of said preparation will cause a new growth of hair, will cause hair to regrow or will prevent the falling of hair.

5. Representing through the use of the word "water" in the trade name of said preparation or in any other manner or by any other means or device that said preparation is a water.

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
EARL M. LOBAN, INDIVIDUALLY AND TRADING AS CEN-
TURY BUSINESS SERVICE, ACME DIVIDEND SYSTEM
AND CENTURY PUBLISHING COMPANY, INC.

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

Docket 3731. Complaint, Mar. 6, 1939—Decision, Apr. 20, 1939

Where an individual engaged in sale and distribution of sales promotion cards, which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to public and which included—

(1) Group of cards arranged for punching out and recording amounts of merchants' customers' sales with totals ranging, as the case might be, from \$5.50 to \$20, and which contained concealed legends on cards entitling holder, upon completion of total sales provided for on card, to amounts ranging from 20 cents to \$5 in accordance with particular legend secured by chance by holder of particular card; and

(2) Other sales promotion cards for use in various types of business but involving same general plan;

Sold to dealers such assortments, together with various display circulars and advertisements for use in distributing and using said cards in various ways involving lottery, game of chance, or gift enterprise in suggested distribution by dealer customers, by whom said cards were distributed to own customers and prospective customers and awards thereon made as called for by particular concealed legends as contained on particular cards when treated so as to reveal nature of such particular legend and chance award thus called for; contrary to an established public policy of the United States Government and in competition with various sellers and distributors of sales promotion cards, premium cards, price competition cards, coupons, and trade stamps, which, when used by dealers do not involve lottery scheme, game of chance, or gift enterprise, and in competition with many who sell and distribute various sales cards or devices for increasing sales of dealers and who are unwilling to offer or sell cards or devices designed and arranged as above found, or otherwise designed or arranged so as to involve game of chance, lottery scheme or gift enterprise and refrain therefrom;

With result that consuming public was induced to deal with or purchase merchandise from dealers using his cards in preference to purchasing merchandise from dealers using devices of his competitors because of lottery scheme, game of chance, or gift enterprise connected with said cards, and with result, through his use of such methods in designing and arranging his cards and distributing them as aforesaid, of unfairly diverting trade to himself from his said competitors who do not use such or equivalent methods:

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

Mr. L. P. Allen, Jr. for the Commission.