

Syllabus

IN THE MATTER OF
T. NOONAN & SONS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3640. Complaint, Oct. 28, 1938—Decision, Aug. 3, 1939*

Where a corporation engaged in the manufacture, sale and distribution of its "Noonan's Vitamin F Scalp Cream" to members of purchasing public in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of preparations and products designed and intended for treatment, relief, and remedy of the conditions for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their preparations and products or their therapeutic properties, and who do not make any false statements in connection with sale and distribution thereof; in advertisements which it disseminated or caused to be disseminated in commerce, through the mail and otherwise, and which were intended and calculated to induce purchase of its said preparation—

- (a) Represented directly and through implication that dandruff and itching scalp were usual cause of baldness in the man and impairment in texture or color of the hair in the woman, and that said preparation would permanently eradicate dandruff and itching scalp and invigorate the roots of the hair and prevent the natural oil of the scalp from being lost, and the hair from falling out and would avert baldness and promote growth of new hair and restore unhealthy hair to health; and
- (b) Represented that "Vitamin F" was essential to a healthy hair or skin and that conditions and ailments of the scalp and hair mentioned, including baldness, were consequences of a dietary deficiency in a so-called "Vitamin F" and that the claimed results from the use of its said product, including stimulation of new hair growth, were induced by presence therein of said vitamin in therapeutically significant quantities and that a majority of the medical and biochemical professions had generally accorded a recognition of the existence, identity, and composition of a certain essentially nutritive factor claimed to be present in its product and called "Vitamin F," such as that accorded by said professions to other such factors and their appellations;

Facts being dandruff and itching scalp are not in all cases cause of baldness nor loss of life and color of the hair as above set forth, use of said product would not permanently eradicate either of aforesaid conditions, any appearance of softness in the texture of the scalp or of restored lustre, beauty, life, and flexibility which it might impart to lifeless, dry, stringy, or brittle hair was but transitory, and it would not invigorate the roots of the hair or accomplish the other results above claimed, and there was no essential nutrition factor generally recognized and characterized by a majority of the medical or biochemical professions as "Vitamin F," and ordinary diet of Americans was such that there was little likelihood of any deficiency in any dietary factor, lack of which might have an adverse effect upon the scalp or hair;

Complaint

29 F. T. C.

With the result that use of such false advertisements induced, or were likely to induce, purchase of drug and with effect of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true and that its said preparation possessed properties claimed and represented and would accomplish, the results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to buy substantial quantities of its said product and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise the effectiveness of their respective preparations and products, as above set forth, to the injury of competition:

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

Mr. R. W. Branch for the Commission.

Yont & Yont, of Boston, Mass., 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 T. Noonan & Sons Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent T. Noonan & Sons Co., is a corporation organized under the laws of the Commonwealth of Massachusetts and having its office and principal place of business at 38 Portland Street, city of Boston, Commonwealth of Massachusetts.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a certain preparation designated as "Noonan's Vitamin F Scalp Cream."

Respondent sells said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the Commonwealth of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States other than the Commonwealth of Massachusetts and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and

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

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with individuals, firms, and partnerships selling and distributing preparations and products designed and intended for, and used in, the treatment, relief and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business as aforesaid, respondent has disseminated, or caused to be disseminated, in commerce among and between the various States of the United States and in the District of Columbia, representations through the use of advertisements distributed by the United States mail and by other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its aforesaid preparation in said commerce. Among and typical of said representations so used and disseminated are the following:

Many people, both men and women, constantly suffer from dandruff, itching scalp and falling hair. Such a condition brings on baldness in men. Women with this condition find that their hair becomes lifeless—colorless—

To rid yourself of dandruff—to stop itching scalp—try Noonan's Vitamin F Scalp Cream.

Dandruff will disappear entirely * * *

Noonan's Vitamin F Scalp Cream is—rapidly absorbed by the scalp. It stops the scalp from itching and gives it a soft smooth texture—rids you of all dandruff. Your hair takes on a natural, attractive luster.

Lifeless, dry and brittle hair detracts from natural beauty. Noonan's Vitamin F Scalp Cream restores your hair to its natural beauty, luster and life! It removes dandruff—invigorates the hair roots.

Lifeless, stringy hair? Try this amazing new vitamin treatment.

It—keeps your scalp from losing its natural oil.

Hair receding? Ask your barber for this amazing new vitamin treatment.

* * * checks falling hair, promotes new hair growth, restores the hair to a natural healthy condition.

This amazing new scientific preparation for both men and women contains vitamin F * * * the vitamin essential to healthy hair and skin!

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out,

all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that dandruff or itching scalp, singly or in combination, cause baldness in the male and the hair of the female to become lifeless and colorless; that respondent's preparation will impart a soft texture to the scalp, luster to the hair, and will restore beauty and life to lifeless, dry, stringy and brittle hair; that it will invigorate the roots of the hair; that it will prevent the scalp from losing its natural oil; that it will prevent the hair from "receding," check falling hair, and promote new hair growth; that it will prevent baldness; that "vitamin F" is essential to a healthy hair or skin; that the conditions and ailments of the scalp and hair herein mentioned, including baldness, are consequences of a dietary deficiency in a so-called "vitamin F"; that the claimed results from the use of the respondent's preparation, including the stimulation of the growth of new hair, are induced by the presence in the said preparation of a so-called "vitamin F" in therapeutically significant quantity; that a majority of the medical and biochemical professions have generally accorded a recognition of the existence, identity and composition of a certain essential nutritive factor, claimed to be present in respondent's preparation, and its appellation of "vitamin F," equivalent to that accorded by those professions to other such factors and their appellations.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact dandruff and itching scalp, singly or in combination, are not in all cases the cause of baldness in the male nor of the loss of life and color of the hair in the female. The use of respondent's preparation will not permanently eradicate either dandruff or itching scalp. Any appearance of softness in the texture of the scalp or of restored luster, beauty, life, and flexibility which it may impart to lifeless, dry, stringy, or brittle hair is but transitory. It will not invigorate the roots of the hair. It will not prevent loss of the scalp's natural oil. It will not prevent the hair from falling out. It will not prevent baldness, nor will it promote new hair growth. It will not restore health to unhealthy hair. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions of "vitamin F."

The true facts are that the ordinary diet of Americans is such that there is little likelihood of there being any deficiency in any dietary

factor the lack of which may have an adverse effect upon the scalp or hair. In any such event the effect of a local application of such a factor to the skin will be systematic, and will not be directly effective at the place of application.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces, or is likely to induce, directly or indirectly the purchase of a drug.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. In consequence thereof, injury has been, 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. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury 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 the 28th day of October 1938, issued, and on the 31st day of October 1938, served its complaint in this proceeding upon said respondent, T. Noonan & Sons Co., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices 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

Findings

29 F. T. C.

all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondent T. Noonan & Sons Co., is a corporation organized under the laws of the Commonwealth of Massachusetts, and having its office and principal place of business at 38 Portland Street, city of Boston, Commonwealth of Massachusetts.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a certain preparation designated as "Noonan's Vitamin F Scalp Cream."

Respondent sells said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the Commonwealth of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States, other than the Commonwealth of Massachusetts, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations, and with individuals, firms, and partnerships selling and distributing preparations and products designed and intended for, and used in, the treatment, relief, and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of said preparation, respondent has

disseminated, or caused to be disseminated, in commerce, as "commerce" is defined in the Federal Trade Commission Act, through the use of advertisements containing statements distributed by the United States mail and by other means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in said commerce.

PAR. 4. Through said advertisements respondent has made representations with respect to the causes of various conditions of the hair or scalp, the therapeutic properties of said preparation and the results that may be expected to be obtained from its use, of which the following are typical:

Many people, both men and women, constantly suffer from dandruff, itching scalp and falling hair. Such a condition brings on baldness in men. Women with this condition find that their hair becomes lifeless—colorless—.

To rid yourself of dandruff—to stop itching scalp—try Noonan's Vitamin F Scalp Cream.

Dandruff will disappear entirely * * *

Noonan's Vitamin F Scalp Cream is—rapidly absorbed by the scalp. It stops the scalp from itching and gives it a soft smooth texture—rids you of all dandruff. Your hair takes on a natural, attractive luster.

Lifeless, dry and brittle hair detracts from natural beauty. Noonan's Vitamin F Scalp Cream restores your hair to its natural beauty, luster and life! It removes dandruff—invigorates the hair roots.

Lifeless, stringy hair? Try this amazing new vitamin treatment.

It—keeps your scalp from losing its natural oil.

Hair receding? Ask your barber for this amazing new vitamin treatment.

* * * checks falling hair, promotes new hair growth, restores the hair to a natural healthy condition.

This amazing new scientific preparation for both men and women contains vitamin F * * * the vitamin essential to healthy hair and skin.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that dandruff or itching scalp, singly or in combination, cause baldness in the male and the hair of the female to become lifeless and colorless; that respondent's preparation will impart a soft texture to the scalp, luster to the hair, and will restore beauty and life to lifeless, dry, stringy, and brittle hair; that it will invigorate the roots of the hair; that it will prevent the scalp from losing its natural oil; that it will prevent the hair from "receding," check falling hair, and promote new hair growth; that it will prevent baldness; that "vita-

Findings

29 F. T. C.

min F" is essential to a healthy hair or skin; that the conditions and ailments of the scalp and hair herein mentioned, including baldness, are consequences of a dietary deficiency in a so-called "vitamin F"; that the claimed results from the use of the respondent's preparation, including the stimulation of the growth of new hair, are induced by the presence in the said preparation of a so-called "vitamin F" in therapeutically significant quantity; that a majority of the medical and biochemical professions have generally accorded a recognition of the existence, identity and composition of a certain essential nutritive factor claimed to be present in respondent's preparation, and its appellation of "Vitamin F," equivalent to that accorded by those professions to other such factors and their appellations.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact, dandruff and itching scalp, singly or in combination, are not in all cases the cause of baldness in the male nor of the loss of life and color of the hair in the female. The use of respondent's preparation will not permanently eradicate either dandruff or itching scalp. Any appearance of softness in the texture of the scalp or of restored luster, beauty, life, and flexibility which it may impart to lifeless, dry, stringy, or brittle hair is but transitory. It will not invigorate the roots of the hair. It will not prevent loss of the scalp's natural oil. It will not prevent the hair from falling out. It will not prevent baldness, nor will it promote new hair growth. It will not restore health to unhealthy hair. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions as "Vitamin F."

The true facts are that the ordinary diet of Americans is such that there is little likelihood of there being any deficiency in any dietary factor the lack of which may have an adverse effect upon the scalp or hair.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces, or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses

the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 2. In consequence thereof, injury has been, 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 respondent T. Noonan & Sons Co., are to the prejudice 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 in violation of the provisions of said 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 said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, T. Noonan & Sons Co., its officers, representatives, agents, 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 a certain medicinal preparation now designated by the name of "Noonan's Vitamin F Scalp Cream," or any other preparation composed of similar ingredients or possessing substantially similar therapeutic qualities whether sold under that designation or any other designation, 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 pur-

Order

29 F. T. C.

chase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication that:

(a) Dandruff or itching scalp, singly or in combination, are a usual cause of baldness in the male or impairment of the texture or color of the hair in the female, or that the said preparation will permanently eradicate dandruff or itching scalp, invigorate the roots of the hair, prevent the natural oil of the scalp from being lost, and the hair from falling out, avert baldness, promote the growth of new hair, restore unhealthy hair to health, or have more than a transitory effect upon the texture or appearance of the scalp or hair;

(b) Any condition of the hair or scalp is due to a dietary deficiency;

(c) The said preparation contains "vitamin F."

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.

Syllabus

IN THE MATTER OF
JOHN GREY THE FUR DESIGNER, INC.

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

Docket 3658. Complaint, Dec. 9, 1938—Decision, Aug. 3, 1939

Where a corporation engaged in manufacture of patterns for fur coats and fur clothing, chiefly, and in sale and distribution thereof to purchasers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce and in said District, and including many who do not in any manner misrepresent the nature, origin, or design of their said patterns—

Represented, through statements in advertisements, circulars, and booklets distributed among prospective purchasers, and on labels and through use of purported signatures of, and telegrams and cablegrams from, well-known French couturiers, such as "Designed by Molyneux, Rue Royale, Paris," "Typical of Worth," "Silhouette sponsored by Jenny," and others of similar tenor, that their said patterns were manufactured and made in Paris and designed by French designers of said city;

Facts being said patterns were made at its place of business in New York from designs produced by its employees there located, and were not made in Paris or designed by the various famous and outstanding Parisian and French designers whose names were used as above indicated and set forth, and pretended telegrams or cablegrams from whom were wholly fictitious, or by any other person or persons in said city, and persons thus referred to had no connection with the designing or manufacturing of such patterns, which were not Paris fur fashions or patterns or designs of fashions from Paris;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that their said patterns were fashioned, designed, and made in Paris and by well-known French designers, for which higher-priced patterns, in the United States, and particularly those designed by persons named and indicated as aforesaid, and imported, there is a preference on the part of a substantial portion of the purchasing public, and into purchase of said patterns because of such belief, and of thereby diverting trade in commerce unfairly to it from its competitors who do not misrepresent the nature, origin, or design of their said products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. B. G. Wilson for the Commission.