

Complaint

IN THE MATTER OF
MARY ELOISE GAUSS, TRADING AS SPRAGUE-KITCHEN
& COMPANY

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

Docket 3821. Complaint, June 15, 1939—Decision, Aug. 23, 1939

Where an individual engaged in manufacture, sale, and distribution of her "Graolene" cosmetic preparation for scalp and hair; in advertisements disseminated through the mails and through circulars and other printed or written matter distributed in commerce among the various States and in the District of Columbia, and which were intended and calculated to induce, directly or indirectly, purchase of said preparation—

- (a) Represented that said "Graolene" was not a dye, but a preparation which, applied to gray hair, would cause it to change its color without dyeing it, and that use thereof restored original natural color to gray hair and supplied to the hair shaft the materials in which gray hair was deficient, facts being it was a lead sulphur dye and, applied to the hair, dyed the exterior of the hair shaft, color produced by use thereof was artificial dye, and such use did not restore original natural color to gray hair and had no effect on pigment cells of hair shaft, and did not supply to said shaft color pigments, deficiency of which is cause of gray hair;
- (b) Represented that use thereof caused the scalp, hair, and roots thereof to be normal and healthy, and that it was an effective remedy or cure for dandruff or itching scalp, and would stimulate growth of hair, facts being it would not accomplish such results and did not constitute a competent or effective cure or remedy for said ailment or condition;
- (c) Represented that it was harmless and that use thereof would produce no injurious effect, facts being salt of lead ingredient might be injurious to health of user, and particularly so where applied to skin on which there were lesions which had broken the continuity of the integument; and
- (d) Failed to reveal, in its said advertisements disseminated as aforesaid, that use thereof might produce harmful or injurious effect as above noted;

With result of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of her said drug-containing preparation:

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

Mr. Robert Mathis, Jr. for the Commission.

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 Mary Eloise Gauss,

Complaint

29 F. T. C.

an individual trading as Sprague-Kitchen & Co., 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. The respondent, Mary Eloise Gauss, is an individual trading as Sprague-Kitchen & Co. and has her office and principal place of business at 4254 North Hermitage Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the scalp and hair designated "Graolene." Respondent causes said preparation, when sold, to be transported from her aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said preparation 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 her aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning said preparation, by United States mails, and by circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Graolene is *not* a dye. It will make your *gray* or *faded* hair the exact shade and *color* it was prior to the time it became gray; the *original* color.

Apply Graolene once; every day; until the hair is the original color, then, once in one, two, or three weeks as required. After you have restored the original color, Graolene should be applied to the scalp occasionally as a tonic. Cover all of the scalp.

Graolene supplies the *materials* in which *gray hair* is *deficient*, operating through the *inside* of the hairs; (Hollow tubes) in a perfectly natural manner, thus restoring the *original color*, *without dyeing* them.

Graolene will make your scalp, roots and hair *normal* and *healthy*, and your hair *natural* appearing. * * * Graolene abolishes dandruff; absolutely; stops the *itching* and will *promote the growth* of your hair.

In making Graolene, the only so-called Deleterious Substance, used is *Grain Alcohol*, .008% (8/1000 percent.)

Although Graolene is harmless, it *kills* the dandruff *germ*.

The same bottle of Graolene is used for *all colors* and *all shades* of hair, whether *brown*, *blonde*, *black*, or *red*.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that the preparation "Graolene" is not a dye and that such preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of such preparation will restore the original natural color to gray hair; that the use of such preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of such preparation causes the scalp, the hair and the roots of the hair to be normal and healthy; that such preparation is a competent and effective remedy or cure for dandruff and itching scalp; that said preparation stimulates the growth of hair; and that the application of such preparation to the skin will produce no harmful or injurious effect.

PAR. 5. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact "Graolene" is a lead sulphur dye. Such preparation contains, among other ingredients, sulphur, lead acetate, and ammonia, which, in combination, form lead sulphide. Such preparation, when applied to the hair, dyes the exterior of the hair shaft, and the color produced by its use is an artificial dye. The use of such preparation will not restore the original natural color to gray hair and has no effect on the pigment cells of the hair shaft. The use of such preparation does not supply to the hair shaft the color pigments, a deficiency of which materials, causes gray hair. The use of such preparation will not cause the scalp, the roots of the hair, or the hair to be normal or healthy. The use of such preparation is not a competent or effective cure or remedy for dandruff or itching scalp. Such preparation does not stimulate the growth of hair. The application of such preparation to the skin may produce a harmful or injurious effect. Such preparation contains, among other ingredients, salt of lead in an amount which may be injurious to the health

of the user thereof, particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said preparation containing drugs.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 June 15, 1939, issued and served its complaint, in this proceeding upon the respondent, Mary Eloise Gauss, trading as Sprague-Kitchen & Co., charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 1, 1939, the respondent filed her answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and 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. The respondent, Mary Eloise Gauss, is an individual trading as Sprague-Kitchen & Co., and has her office and principal place of business at 4254 North Hermitage Avenue in the city of Chicago, State of Illinois.

PAR. 2 The respondent is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the scalp and hair designated "Graolene." Respondent causes said preparation, when sold, to be transported from her aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the

District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said preparation 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 her aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning said preparation, by United States mails, and by circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Graolene is *not* a dye. It will make your *gray* or *faded* hair the exact shade and *color* it was prior to the time it became gray; the *original* color.

Apply Graolene once; every day; until the hair is the original color, then, once in one, two, or three weeks as required. After you have restored the original color, Graolene should be applied to the scalp occasionally as a tonic. Cover all of the scalp.

Graolene supplies the *materials* in which *gray* hair is *deficient*, operating through the inside of the hairs; (Hollow tubes) in a perfectly natural manner, thus restoring the *original* color, *without* dyeing them.

Graolene will make your scalp, roots and hair *normal* and *healthy*, and your hair *natural* appearing. * * * Graolene abolishes dandruff; absolutely; stops the *itching* and will *promote the growth* of your hair.

In making Graolene, the only so-called Deleterious Substance, used is *Grain Alcohol* .008% (8/1000 percent.)

Although Graolene is harmless, it *kills* the dandruff germ.

The same bottle of Graolene is used for *all colors* and *all shades* of hair, whether *brown*, *blonde*, *black*, or *red*.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that the preparation "Graolene" is not a dye and that such preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of such preparation will restore the original natural color to gray hair; that the use of such preparation

Conclusion

29 F. T. C.

supplies to the hair shaft the materials in which gray hair is deficient; that the use of such preparation causes the scalp, the hair and the roots of the hair to be normal and healthy; that such preparation is a competent and effective remedy or cure for dandruff and itching scalp; that said preparation stimulates the growth of hair; and that the application of such preparation to the skin will produce no harmful or injurious effect.

PAR. 5. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact "Graolene" is a lead sulphur dye. Such preparation contains, among other ingredients, sulphur, lead acetate, and ammonia, which, in combination, form lead sulphide. Such preparation, when applied to the hair, dyes the exterior of the hair shaft, and the color produced by its use is an artificial dye. The use of such preparation will not restore the original natural color to gray hair and has no effect on the pigment cells of the hair shaft. The use of such preparation does not supply to the hair shaft the color pigments, a deficiency of which materials, causes gray hair. The use of such preparation will not cause the scalp, the roots of the hair, or the hair to be normal or healthy. The use of such preparation is not a competent or effective cure or remedy for dandruff or itching scalp. Such preparation does not stimulate the growth of hair. The application of such preparation to the skin may produce a harmful or injurious effect. Such preparation contains, among other ingredients, a salt of lead in an amount which may be injurious to the health of the user thereof, particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said preparation containing drugs.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Mary Eloise Gauss, trading as Sprague-Kitchen & Co., as herein found, have been and are to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that she waives all intervening procedure and further 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, Mary Eloise Gauss, individually and trading as Sprague-Kitchen & Co., or trading under any other name or names, her agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a cosmetic preparation now designated "Graolene," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or by implication, that said preparation is not a dye or is other than a dye, or will cause gray hair to change color without dyeing the hair; or that the use of said preparation will restore the original or natural color to gray hair, or will supply to the hair shaft the materials in which gray hair is deficient, or will cause the scalp, the hair or the roots of the hair to be normal or healthy; or that said preparation is an effective remedy or cure for dandruff or itching scalp, or will stimulate the growth of hair; or that said preparation is harmless or that the use thereof will produce no injurious effect, or which advertisements fail to reveal that the use of said preparation may produce a harmful or injurious effect particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

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

IN THE MATTER OF
THE WILLIAMS AND WILKINS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3844. Complaint, July 8, 1939—Decision, Aug. 23, 1939

Where a corporation engaged in publication, distribution, and sale of medical and other scientific books, in commerce among the various States and in the District of Columbia, in substantial competition with others engaged in publication, distribution and sale of such books in commerce as aforesaid, and in said District—

Discriminated in price between different purchasers of said books for resale to retailers or ultimate users, through giving, granting, and allowing price discounts from its established list of 20 percent, 25 percent, 30 percent and 35 percent, to various of such purchasers, for resale in same area and to same prospective customers and at same time, and thereby enabled some of said purchasers to buy its said books at price lower than competing purchasers were thus able to buy same books, to the injury of less favored buyers;

With the result that the effect of said discriminations in price, which did not, as appeared, come within any of the saving provisos of law involved, was substantially to lessen competition with favored purchasers and tend to create a monopoly in them, and to injure, destroy or prevent competition in sale and distribution of such books between favored purchaser recipients of such discriminatory prices and other less favored competing purchasers thereof who did not receive the same:

Held, That such discrimination in price by it constituted violation of Section 2 (a) of Clayton Act, as amended.

Mr. Frank Hier for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly described since June 19, 1936, has violated, and is now violating, the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Williams and Wilkins Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and place of business at Mount Royal and Guilford Avenues, Baltimore, Md., and has been