

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 1, 1939, TO MAY 31, 1940

IN THE MATTER OF

STAFFORD T. MITCHELL, JANET M. MITCHELL, AND OTIS
S. MITCHELL, DOING BUSINESS AS THE ARVIL COM-
PANY

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

Docket 3472. Complaint, July 7, 1938—Decision, Dec. 6, 1939

Where three individuals engaged in compounding two hair preparations, and in distributing and selling same to purchasers at various points in other States, in substantial competition with others also engaged in sale and distribution of similar preparations or other products designed and intended for similar usage, in commerce among the various States and in the District of Columbia; in advertising their said preparations in publications of general circulation, and in bulletins and other advertising folders distributed to members of the purchasing public situated in various States—

- (a) Represented that their product "Arvil" restored or replaced pigment in the hair shaft, and that use thereof caused hair to assume a natural or youthful color, and that graying hair was an indication that hair or scalp was not in normal health, facts being said "Arvil" did not restore or replace pigment as above set forth, but acted as a dye to color surface of hair, color of which is dependent upon pigment deposited in shaft thereof and which was not restored or replaced as aforesaid by use of such preparation, and graying hair was not indication that hair or scalp was not in normal health;
- (b) Represented that it was the consensus of scientific opinion that dandruff is caused by a germ, and represented that said "Arvil" was effective as antiseptic or astringent, applied to hair or scalp, and that it and their "Dawn Shampoo" preparation would permanently relieve dandruff or itching scalp and constituted effective treatments therefor and cures or remedies for baldness and for falling hair and cause or causes of such condition, facts being cause of dandruff is not definitely known, and it is not consensus of scientific opinion that it is caused by germ, as above set forth, and said preparations would not permanently relieve said condition or itching scalp, and did not constitute cure or remedy or effective treatment for former, or for baldness or cause or causes of falling hair; and
- (c) Represented that application of said "Arvil" to skin was always safe, facts being such application was not safe under all conditions, but use of said product, by virtue of lead acetate therein contained, might be injurious when so applied, and particularly where there was any injury, trauma, abrasion, or inflammatory or eczematous condition of the scalp, and, continued over a period of time, might result in lead poisoning;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and into purchase of substantial volume of said products because of such belief, and with effect of thereby unfairly diverting trade to them from those also engaged in sale and distribution in commerce of similar preparations or other products designed and intended for similar usage, and who truthfully advertise the same:

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

Before *Mr. William C. Reeves*, *Mr. Charles F. Diggs*, and *Mr. Webster Ballinger*, trial examiners.

Mr. Merle P. Lyon, *Mr. George Foulkes*, and *Mr. Donovan Divet* for the Commission.

Mr. Otis S. Mitchell, in behalf of himself and other respondents.

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 Stafford T. Mitchell, Janet L. Mitchell, and Otis S. Mitchell, individuals, trading as The Arvil Co., hereinafter referred to as respondents, have violated the provisions of 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. Respondents, Stafford T. Mitchell, Janet L. Mitchell, and Otis S. Mitchell, are individuals, trading under the name and style of The Arvil Co., with their office and place of business located at 1700 Wilson Avenue, Chicago, Ill. Respondents are now, and for more than 1 year last past have been, engaged in the business of compounding, distributing, and selling in commerce, as herein set out, hair preparations designated "Arvil" and "Dawn Shampoo."

PAR. 2. Said respondents being engaged in business as aforesaid, cause said products when sold to be transported from their place of business in Chicago, Ill., to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondents now maintain a course of trade and commerce in said products distributed and sold by them, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, corporations, and firms likewise engaged in the business of

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selling and distributing similar preparations, or other preparations or products designed and intended for similar usage, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of their business and for the purpose of inducing individuals to purchase their line of products, respondents made, published, or caused to be published, in advertising folders and other literature, the following statements and representations:

You can, by the knowledge at hand, do much that will safely help you to retain the charm and vital appearance of youth.

So we conclude that this missing pigment or color must be replaced, either by the hair itself or some outside agency, for until this is done the hair will look gray in color.

The graying of the hair is a distinct sign that the hair and scalp is not in a normal, youthful health.

It has been accepted that dandruff is caused by a germ. A germ that must be eliminated before permanent relief from the dangers of the disease and the annoyance of the itching scalp that goes with it usually can be attained. You have probably noticed that for a limited time after a shampoo that your hair seems free from dandruff scales—but they appear later. This indicates that more than mere washing is necessary to effect any permanent good.

Both Stitson and Solis-Cohen agree that when the hair is falling out badly or baldness has already appeared that a specially prepared dilute solution of Tincture of Cantharides is often used to stimulate the scalp and thus encourage hair growth.

It provides lac sulphur for the treatment of dandruff Tincture of Cantharides to promote hair vigor, Plumbi Acetas as an astringent, antiseptic and protective element and glycerine as a lubricant and carrying agent to spread the preparation over the whole scalp and hair evenly. Its manner of application is by massage. **AND—IT BRINGS TO GRAY HAIR A YOUTHFUL, NATURAL COLOR.**

And the youthful color that will come to your hair, so natural to look upon, will be a reward to you I know.

Dawn Shampoo is a delightful product that cleans the hair and scalp thoroughly and healthfully. By itself it is a real hair health aid, used with ARVIL, each helps the other on your hair.

Offer No. 1—1 bottle ARVIL and

1 bottle Shampoo FREE.

In all of its advertising literature respondents represent through statements and representations herein set out, and through statements of similar import and effect that:

(a) The application of Arvil to the skin is always "safe."

(b) Arvil replaces missing pigment in the hair shaft proper.

(c) Greying hair is a sign that the hair and scalp are not in normal health.

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(d) It is the consensus of scientific opinion that dandruff is caused by a germ.

(e) Both "Arvil" and "Dawn Shampoo" will give "permanent" relief from dandruff or itching scalp and that both or either of respondents' products are a competent treatment for dandruff.

(f) Both products, or either of them, are competent treatments or effective remedies for conditions responsible for hair falling out, and will encourage hair growth, promote hair vigor and are effective remedies for baldness.

(g) Arvil has an antiseptic effect on the hair and scalp.

(h) Arvil causes hair to assume a "natural" and "youthful" color.

(i) The ingredient Plumbi Acetas in Arvil acts as an astringent, antiseptic, or protective element, and is present in the preparation because of these properties and not because of its dyeing effect on the hair.

PAR. 5. The aforesaid representations by respondents with respect to the therapeutic properties of their products, and the results obtained from the use thereof, are exaggerated, false, misleading, and untrue. In truth and in fact respondents' preparation "Arvil" is not safe to use in all cases, because it contains lead acetate, which is in some cases dangerous to use on the skin. Arvil does not replace pigment in the hair shaft proper, but as a dye it colors the surface of the hair. Graying hair is not a sign that the hair and scalp are not in normal health. Gray hair appears with age, and in many cases, on scalps that are in normal health. It is not the consensus of scientific opinion that dandruff is caused by a germ. Respondents' product will not give permanent relief from dandruff or itching scalp, or cause dandruff scales to disappear after treatment is discontinued. Said products are not competent treatments for dandruff or baldness, and they are not an effective remedy for conditions responsible for falling hair. Arvil does not have an antiseptic effect on the hair and scalp and will not cause hair to assume a "natural" or "youthful" color. Plumbi Acetas, the Latin words for lead acetate, does not act as an astringent, antiseptic, or protective element when applied to the scalp or hair, but acts as a dye leading to the formation of dark lead compounds on the hair, and, as set forth above, may, in some cases, cause lead poisoning.

PAR. 6. Each and all of the false and misleading statements made by respondents as hereinabove set forth in their advertising folders and other literature, in offering for sale and selling their products, had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the

erroneous belief that all of said representations are true, and into the purchase of a substantial volume of respondents' products on account of such beliefs. As a result, trade is unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling similar preparations, or other preparations or products designed or intended for similar usage, and who truthfully advertise their products. As a consequence thereof substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 7, 1938, issued, and on July 11, 1938, served its complaint in this proceeding upon the respondents Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, individuals trading as The Arvil Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondents not having filed answer), testimony, and other evidences in support of the allegations of said complaint were introduced by Merle P. Lyon, Esq. and George Foulkes, Esq., attorneys for the Commission, and in opposition to the allegations of the complaint by Otis S. Mitchell, attorney per se and for the remaining respondents, before William C. Reeves, Charles F. Diggs, and Webster Ballinger, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); 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. Respondents, Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, are individuals trading under the name and style of The Arvil Co., with their office and place of business located at 1700 Wilson Avenue, Chicago, Ill. Respondents are now, and for more than 1 year prior to the issuance of the complaint herein were engaged in the business of compounding, distributing, and selling hair preparations designated "Arvil" and "Dawn Shampoo."

PAR. 2. Respondents being engaged in business as aforesaid cause said products, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said products, distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, and with corporations and firms also engaged in the business of selling and distributing similar preparations, or other preparations or products designed and intended for similar usage, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of their business and for the purpose of inducing the purchase of their said products, respondents caused various statements and representations relative to said products to be inserted in advertisements in publications having a general circulation and in bulletins and other advertising folders distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

You can, by the knowledge at hand, do much that will safely help you to retain the charm and vital appearance of youth.

So we conclude that this missing pigment or color must be replaced, either by the hair itself or some outside agency, for until this is done the hair will look gray in color.

The graying of the hair is a distinct sign that the hair and scalp is not in a normal, youthful health.

It has been accepted that dandruff is caused by a germ. A germ that must be eliminated before permanent relief from the dangers of the disease and the annoyance of the itching scalp that goes with it usually can be attained. You have probably noticed that for a limited time after a shampoo that your hair seems free from dandruff scales—but they appear later. This indicates that more than mere washing is necessary to effect any permanent good.

Findings

Both Stitson and Solis-Cohen agree that when the hair is falling out badly or baldness has already appeared that a specially prepared dilute solution of Tincture of Cantharides is often used to stimulate the scalp and thus encourage hair growth.

It provides lac sulphur for the treatment of dandruff Tincture of Cantharides to promote hair vigor, Plumbi Acetas as an astringent, antiseptic and protective element and glycerine as a lubricant and carrying agent to spread the preparation over the whole scalp and hair evenly. Its manner of application is by massage. AND—IT BRINGS TO GRAY HAIR A YOUTHFUL, NATURAL COLOR.

And the youthful color that will come to your hair, so natural to look upon, will be a reward to you I know.

Dawn Shampoo is a delightful product that cleans the hair and scalp thoroughly and healthfully. By itself it is a real hair health aid, used with ARVIL, each helps the other on your hair.

Offer No. 1—1 bottle ARVIL and
1 bottle Shampoo FREE.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents represent directly or by implication that:

- (a) The application of Arvil to the skin is always "safe."
- (b) Arvil replaces missing pigment in the hair shaft proper.
- (c) Greying hair is a sign that the hair and scalp are not in normal health.
- (d) It is the consensus of scientific opinion that dandruff is caused by a germ.
- (e) Both "Arvil" and "Dawn Shampoo" will give "permanent" relief from dandruff or itching scalp and that both or either of respondents' products are a competent treatment for dandruff.
- (f) Both products, or either of them, are competent treatments or effective remedies for conditions responsible for hair falling out, and will encourage hair growth, promote hair vigor and are effective remedies for baldness.
- (g) Arvil has an antiseptic effect on the hair and scalp.
- (h) Arvil causes hair to assume a "natural" and "youthful" color.
- (i) The ingredient Plumbi Acetas in Arvil acts as an astringent, antiseptic or protective element, and is present in the preparation because of these properties and not because of its dyeing effect on the hair.

PAR. 5. The aforesaid statements and representations by respondents with respect to the therapeutic properties of said products and the results obtained from the use thereof are exaggerated, false, and misleading. In truth and in fact, respondents' preparation "Arvil" is not safe for application to the skin in all cases. Said preparation contains lead acetate in an amount which may be in-

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jurious when applied to the skin, particularly if there is any injury, trauma, abrasion, or inflammatory or eczematous condition of the scalp. The use of said preparation over a period of time may result in lead poisoning. The use of said preparation "Arvil" does not restore or replace pigment in the hair shaft but acts as a dye to color the surface of the hair. The color of the hair is dependent upon the pigment deposited in the hair shaft and the pigment of the hair is not restored or replaced by the use of "Arvil."

Graying hair is not an indication that the hair or scalp is not in normal health. The graying of the hair of aged persons is a natural process. Premature graying of the hair is not a physiological process and the cause thereof is not definitely known. Graying hair appears with age and in many cases on scalps that are in normal health. It is not the consensus of scientific opinion that dandruff is caused by a germ. Dandruff results from the scaling of the superficial layers of the epidermis of the scalp which is constantly being replaced by new growing cells from underneath which process to a certain extent is normal. The cause of dandruff is not definitely known.

There are two types of dandruff, to wit: The dry and the wet or oily types. Dry dandruff exists where there is an atrophied condition; wet dandruff exists where there is an inflammatory condition of the skin. A drug or combination of drugs which may be helpful in the dry type of dandruff may be harmful when used in the treatment of the wet type of dandruff and vice versa. The principal constituents of "Arvil" are sulphur, cantharides, and lead acetate. Sulphur is a mild germicide and a mild skin irritant. The quantity of sulphur in said preparation is insufficient to be of any substantial therapeutic value. Cantharides is a skin irritant and the use thereof may, in some cases, improve the circulation in the scalp. The preparation "Arvil" does not have an appreciable antiseptic or astringent effect when applied to the hair or scalp.

The use of neither one nor both of said preparations will permanently relieve dandruff or itching scalp, or is a cure or remedy or an effective treatment for dandruff, or is a cure or remedy or an effective treatment for baldness or for the cause or causes of falling hair. The most common form of baldness is the ordinary ideopathic or premature form, the cause of which is not known. There are various pathological causes of baldness and falling hair, such as ringworm and eczema of the scalp and various constitutional diseases. The preparation Arvil is essentially a hair dye. The effectiveness of the preparation Arvil in dyeing the hair is due to the plumbi acetate (lead acetate) contained therein, which combines with the sulphur to form a lead sul-

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phide. Lead acetate is seldom prescribed in the treatment of scalp diseases because the use thereof may result in lead poisoning.

PAR. 6. The complaint in this proceeding incorrectly referred to respondent Janet M. Mitchell as Janet L. Mitchell. The complaint was duly served on respondent Janet M. Mitchell and the respondents herein stipulated and agreed, at a hearing duly called and held in this proceeding that respondent Janet M. Mitchell is the individual referred to in the complaint as respondent Janet L. Mitchell and the respondents further stipulated and agreed that the record herein show the true name of said respondent, to wit: Janet M. Mitchell. The Commission, therefore, finds that for all purposes in this proceeding, respondent Janet M. Mitchell and Janet L. Mitchell is one and the same person.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents as hereinabove set forth had, and now has, the tendency and capacity to, and does, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are and were true, and into the purchase of a substantial volume of respondents' products because of such erroneous and mistaken belief. As a result, trade is now, and has been, unfairly diverted to respondents from individuals, firms, and corporations also engaged in the business of selling and distributing in commerce among and between the various States of the United States similar preparations, or other preparations or products designed or intended for similar usage, and who truthfully advertise their products.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (the respondents not having filed answer), testimony and other evidence taken before William C. Reeves, Charles F. Diggs, and Webster Ballinger, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the allegations of the complaint (respondents not having filed a brief and oral argument not having been requested), and the

Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, individually, and trading as The Arvil Co. or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their hair preparations designated as "Arvil" and "Dawn Shampoo," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties whether sold under those names or any other name or names in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that "Arvil" restores or replaces pigment in the hair shaft or that the use thereof causes the hair to assume a natural or youthful color or that said product produces color by any means other than dyeing the hair shaft.

2. Representing that graying hair is an indication that the hair or scalp is not in normal health.

3. Representing that it is the consensus of scientific opinion that dandruff is caused by a germ.

4. Representing that "Arvil" is effective as an antiseptic or astringent when applied to the hair or scalp.

5. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, will permanently relieve dandruff or itching scalp or that either, or both of said products is an effective treatment for dandruff.

6. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, is a cure or remedy for baldness or is a cure or remedy or an effective treatment for falling hair or the cause or causes thereof.

7. Representing, through failure to reveal that the use of "Arvil" on the skin is not wholly safe, particularly if there is any injury, abrasion or inflammatory or eczematous condition thereon, or through any other means or device or in any other manner, that "Arvil" contains no harmful or dangerous drugs, or that the use of said preparation will have no ill effects upon the human body.

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

Syllabus

IN THE MATTER OF

INTERNATIONAL PRESS SERVICE, INC. (FORMERLY
BERKELEY STUDIOS INTERNATIONAL PRESS SERVICE,
INC.), AND FRED FRIEWALDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3618. Complaint, Oct. 1, 1938—Decision, Dec. 6, 1939*

Where a corporation engaged, as International Press Service, Inc., in sale in commerce among the various States of photographs of members of the public, posed, taken, developed, and finished by it and its agents and representatives, and an individual who was and had been president and treasurer thereof since its incorporation and had been participant in organization thereof and was one of its three stockholders and in direction and control of its sales activities and policies as below set forth, and who acted as photographer in its business and in the development, etc., of photographs taken by its agents and representatives of members of the public contacted by such agents and representatives; and as aforesaid engaged, in substantial competition with others similarly engaged in sale and distribution in commerce of photographs of members of the public, posed, taken, developed, and finished by such competitors;

In soliciting, through their "booker" or salesman, members of the public, usually selected from among those who had received publicity in newspapers or other publications and who, by reason of their business, professional, or other activities, were of news interest—

Represented to such persons, contacted usually by phone, that salesman or solicitor was a representative of Berkeley Studios, International Press Service, or of International Press Service, or of the Press Service or the International, and advised prospect thus approached that a photograph was desired for the press library of such corporation, and solicited appointment, without expense to one solicited, to permit making of photograph of such person for filing in such press library for release to any newspaper or other news publication which might call upon them for the furnishing of such a photograph, and advised inquiring prospect as to cost to him of one or more of the photographs thus taken on completion thereof, and invited person thus contacted, and to whom in due course they sent proofs, to "kindly approve one for press release and return it to our representative who will call * * *" and sought, at said time and irrespective of making of inquiries by prospects thus approached, to sell to said persons quantities of the finished photographs thus taken;

Notwithstanding fact corporation in question had no direct connection with any newspaper publication in the United States or in other countries, did not advertise its services to newspapers, had as its principal purpose the obtaining of the opportunity to photograph members of public and sell to said members such photographs, and purpose was not, primarily, to offer or cause to be published photographs solicited, as was case with the news