

IN THE MATTER OF

J. W. COOPER AND JAMES J. COOPER, TRADING AS
"CURL-O-WAVE COMPANY"COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3524. Complaint, Aug. 4, 1938—Decision, Feb. 23, 1940*

Where two individuals engage in manufacture, sale, and distribution of hair curling preparation under designation "Curl-O-Wave," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of such preparations in commerce as aforesaid, and including many who distribute and sell such hair curling fluids and do not in any way misrepresent quality and character of their products or effectiveness thereof; in advertising circulars and folders, and in advertisements in magazines and newspapers circulated generally throughout the United States—

Represented that their said product was odorless and beneficial to hair, and that use thereof made straightest hair naturally curly, and would transform obstinate hair into dainty curls and improve hair texture, and constituted a new discovery, and was not an ordinary curling fluid, facts being it was such ordinary curling fluid, and various representations otherwise made by them were grossly exaggerated, misleading and untrue, and it would not accomplish results and did not have qualities claimed therefor;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with result, as direct consequence thereof, that number of consuming public purchased substantial volume of their preparation and trade was diverted unfairly to them from competitors also engaged in distribution and sale of such preparations in commerce, and who truthfully advertise their products and effectiveness thereof:

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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John R. Phillips, Jr. and *Mr. DeWitt T. Puckett* for the Commission.

Mr. James J. Cooper, pro se.

COMPLAINT¹

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 J. W. Cooper, an

¹ Commission on February 23, 1940, amended complaint to include as additional party respondent, James W. Cooper.

individual, trading as "Curl-O-Wave Company," hereinafter referred to as respondent, has 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. Respondent, J. W. Cooper, is an individual trading as "Curl-O-Wave Company," with his office and principal place of business located at 201 North Wells Street, in the city of Chicago, State of Illinois. Said respondent is engaged in the manufacture, sale and distribution of a hair-curling preparation designated "Curl-O-Wave."

Respondent causes its product, when sold, to be transported from his place of business in Chicago, in the State of Illinois, to the purchasers thereof located in the States of the United States other than the State of Illinois and in the District of Columbia.

Respondent now maintains, and for more than 6 years last past has maintained, a course of trade in the aforesaid hair curling preparation so distributed and sold by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, the respondent is now, and has been for more than 6 years last past, in competition with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing hair-curling preparations 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 said business, and for the purpose of inducing the purchase of said preparation, respondent has made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, many representations concerning the character and nature of said preparation, and concerning the results obtained from its use. Among said representations made by respondent are the following:

Curls—the straightest hair can be made naturally curly with Curl-O-Wave.

Free booklet and sample. Send 10¢ to cover mailing.

A few pleasant moments with the new Curl-O-Wave transforms the most obstinate straight hair into soft dainty curls.

Curl-O-Wave is greaseless, odorless and absolutely safe—its beneficial ingredients are actually good for the hair.

A new simple method of waving with Curl-O-Wave transforms lifeless scraggly hair into beautiful soft curls.

Curl-O-Wave is absolutely harmless and is actually good for the hair, keeps it soft and manageable—You'll be amazed at the Magic of Curl-O-Wave.

Complaint

30 F. T. C.

Curl-O-Wave makes the most obstinate straight hair wave into alluring curls which will last from one to three weeks.

It is now within one's power to acquire brilliant natural waves. Curl-O-Wave will give a soft, fluffy, billowy texture no matter how obstinate and straight the hair may be.

Curl-O-Wave is not an ordinary curling fluid.

Curl-O-Wave Company made a discovery which makes natural curls a possibility for everyone.

It is only by keeping the hair waved that it will gradually become naturally curly.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and of its effectiveness in use. In all of its advertising literature, and through other means, respondent, directly or by inference, through statements and representations herein set out, and other statements of similar import and effect, represents: That his preparation will make the straightest hair naturally curly; that it transforms obstinate straight hair into dainty curls; that it is greaseless, odorless, beneficial, and harmless; that it is not an ordinary curling fluid, but a new discovery; that it will improve the texture of the hair; and that the cost of mailing respondent's booklet and sample is 10 cents.

PAR. 4. The representations made by respondent with respect to the nature and effect of his preparation when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact "Curl-O-Wave" is not greaseless or odorless. It is not beneficial to the hair or harmless. It will not make the straightest hair naturally curly, and it will not transform obstinate hair into dainty curls. It is not a new discovery, but it is an ordinary curling fluid and will not improve the texture of the hair. The cost of mailing respondent's booklet and sample is less than 10 cents.

The true fact is that the frequent application of respondent's preparation may be dangerous and injurious, rather than harmless and beneficial, for the reason that it contains ingredients and intermediate products of such ingredients which, under some conditions, are poisonous.

PAR. 5. There are among respondent's competitors many who distribute and sell cosmetics who do not in any way misrepresent the quality or character of their respective products of their effectiveness when used.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in advertising his hair-curling preparation and its effectiveness when used, as hereinabove set out, were, and are calculated to, and have 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. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparation, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling hair-curling preparations, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done, 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 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 August 4, 1938, issued and subsequently served its complaint in this proceeding upon respondent, J. W. Cooper, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent, J. W. Cooper, filed his answer and subsequently, as a result of a stipulation entered into upon the record, James J. Cooper was made a party respondent and adopted the answer of J. W. Cooper as his answer. Subsequently the Commission, by order, approved such action. Testimony and other evidence in support of the allegations of the complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by James J. Cooper, pro se, before W. W. Sheppard, an examiner 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, the answer thereto, testimony and other evidence and brief in support of the allegations of the complaint, 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 respondents, J. W. Cooper, and James J. Cooper, are individuals trading as "Curl-O-Wave Company," with their office and principal place of business located at 201 North Wells Street, in the city of Chicago, in the State of Illinois. Said respondents are engaged in the manufacture, sale and distribution of a hair-curling preparation designated "Curl-O-Wave." Respondents cause said product, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents now maintain, and for more than 6 years last past have maintained, a course of trade in the aforementioned hair-curling preparation, so distributed and sold by them in commerce between and among the various States of the United States, and in the District of Columbia.

In the course and conduct of their business respondents are now, and have been at all times mentioned herein, in competition with other individuals and with corporations and partnerships engaged in the business of selling and distributing hair-curling preparations in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of said business, and for the purpose of inducing the purchase of said hair-curling preparation designated "Curl-O-Wave," respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among said representations made by respondents are the following:

Curls—the straightest hair can be made naturally curly with Curl-O-Wave. Free booklet and sample. Send 10¢ to cover mailing.

A few pleasant moments with the new Curl-O-Wave transforms the most obstinate straight hair into soft dainty curls.

Curl-O-Wave is greaseless, odorless and absolutely safe—its beneficial ingredients are actually good for the hair.

A new simple method of waving with Curl-O-Wave transforms lifeless scraggly hair into beautiful soft curls.

Curl-O-Wave is absolutely harmless and is actually good for the hair, keeps it soft and manageable—You'll be amazed at the Magic of Curl-O-Wave.

Curl-O-Wave makes the most obstinate straight hair wave into alluring curls which will last from one to three weeks.

It is now within one's power to acquire brilliant natural waves. Curl-O-Wave will give a soft, fluffy, billowy texture no matter how obstinate and straight the hair may be.

Curl-O-Wave is not an ordinary curling fluid.

Curl-O-Wave Company made a discovery which makes natural curls a possibility for everyone.

It is only by keeping the hair waved that it will gradually become naturally curly.

PAR. 3. All of said statements, together with similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' product, and of its effectiveness in use. In all of respondent's advertising literature and through other means, the respondents represent that said preparation (Curl-O-Wave) will make the straightest hair naturally curly; that said preparation transforms obstinate, straight hair into dainty curls; that it is greaseless, odorless, beneficial and harmless; that Curl-O-Wave is not an ordinary curling fluid, but is a new discovery; and that it will improve the texture of the hair.

The representations made by respondents with respect to the nature and effect of their preparation, when used, are grossly exaggerated, misleading, and untrue. In truth and in fact "Curl-O-Wave" is not odorless and it is not beneficial to the hair. It will not make the straightest hair naturally curly, and it will not transform obstinate hair into dainty curls. It is not a new discovery, but it is an ordinary curling fluid. The use of said product will not improve the texture of the hair.

PAR. 4. There are among respondents' competitors many who distribute and sell hair-curling fluids who do not in any way misrepresent the quality and character of their respective products or their effectiveness when used.

PAR. 5. The Commission finds that the aforesaid false and misleading statements and representations made by the respondents in advertising their hair curling preparation and its effectiveness when used, are calculated to, and have 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. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' preparation, with the result that trade has been diverted unfairly to respondents from their competitors who are also engaged in the business of distributing and selling hair curling preparations in commerce among and between the various States of the United States and in the District of Columbia, and who truthfully advertise their respective products and the effectiveness thereof when used.

Order

30 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of 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 answer of the respondents, J. W. Cooper and James J. Cooper, and upon the testimony and other evidence taken before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and upon brief filed herein by John R. Phillips, Jr., counsel for the Commission, 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 the respondents, J. W. Cooper and James J. Cooper, individually and trading as Curl-O-Wave Company or trading under any other name or names, their agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a hair-curling preparation now designated as "Curl-O-Wave," or of any hair-curling preparation possessing similar properties whether sold under the same name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents' preparation is odorless or that such preparation is beneficial to the hair;

2. Representing that the use of respondents' preparation will make the straightest hair naturally curly, or that such preparation will transform obstinate hair into dainty curls, or that such preparation is a new discovery or is anything other than an ordinary hair-curling fluid, or that the use of such preparation will improve the texture of the hair.

It is further ordered, That the 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

BUFORD & OWENS COLLEGE, AND GUSSIE BUFORD,
MARY OWENS BOONE WELLINGHAM AND GEORGE
BUFORD

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

Docket 3790. Complaint, May 12, 1939—Decision, Feb. 23, 1940

Where a corporation and three individuals, who were general officers thereof and formulated, controlled, and directed its policies, acts and practices, engaged in sale and distribution, under their trade or corporate name, of hair oil, pressing oil, and shampoo, and acting together in cooperation with each other in acts and things below set forth; in advertisements which they disseminated by the mails, by newspaper of general circulation, and by circulars distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of their said products—

- (a) Represented that said hair preparations were cure or remedy for dandruff, falling hair and scalp diseases, and would promote growth of hair, through such statements as, "As a Dandruff Remover it cannot be beaten," "As a Hair Grower it cannot be excelled and has no equal," "It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow," and others of similar tenor, facts being said products were of no value in promoting growth of hair or preventing same from falling out, and said representations and claims were otherwise also grossly exaggerated, misleading and untrue; and

Where said corporation and individuals, engaged as aforesaid—

- (b) Made use of word "College" in corporate name employed by them, and thereby represented that they were conducting an institution of higher learning, facts being said corporation was not college, as commonly understood by public, and institution of higher learning empowered to confer degrees, with faculty of learned instructors in various branches of learning, and including liberal arts and sciences;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and of causing portion of said public, because of such belief, to purchase 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 constituted unfair and newspapers and other publications of general circulation throughout various

Mr. Karl Stecher for the Commission.

Jarman, Brown, Looney & Watts, of Oklahoma City, Okla., for respondents.