

IN THE MATTER OF

ROSE HEIFLER AND FRED JACKSON DOING BUSINESS
UNDER THE FIRM NAME OF HEIFLER & JACKSONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3893. Complaint, Sept. 14, 1939—Decision, Apr. 15, 1940*

Where two individuals engaged in sale and distribution of their "Morgan's Pomade" for scalp and hair, to purchasers in various other States and in the District of Columbia, in substantial competition with those engaged in sale and distribution in commerce of similar treatments and devices designed for and useful in treatment of scalp and hair, and including many who do not in any manner misrepresent their treatment and devices; in advertisements of their said product in circulars, pamphlets, and other advertising matter which they distributed and caused to be distributed to members of the purchasing public—

- (a) Represented, directly or by implication, that product in question was not a tint or dye, and that when applied to gray hair it caused hair to change its color without dyeing, and that use thereof would restore original natural color to gray hair; and
- (b) Represented that use of such product supplied the hair shaft with materials in which gray hair was deficient and that use thereof would prevent hair from falling out and that preparation penetrated to the roots of and nourished the hair and was a competent and effective cure and remedy for and preventive of dandruff—

Facts being that product in question was a lead and sulphur dye, dyed exterior of hair shaft when applied to gray hair and did not produce natural but artificial color, did not restore original natural color to gray hair, had no effect on pigment cells of hair shaft, and did not supply thereto color pigments, deficiency of which causes such hair, it would not prevent hair falling out and was not a cure or remedy for or preventive of dandruff and would not penetrate to roots of hair nor nourish same, but might be injurious to tender skin or that on which there were lesions which had broken continuity of integument; and

- (c) Failed to reveal in its said advertisements that application of its said preparation as above set forth might be injurious and represented thereby that preparation in question, when thus applied, was harmless and would produce no injurious effect;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true and of causing portion thereof, because of such belief, to buy said product, and with result that trade was thereby diverted unfairly to them from their competitors engaged in sale and distribution in commerce, as aforesaid, of preparations, treatments, and devices for use in treatment of ailments, diseases, and conditions for which they recommend their said product, and who truthfully advertise effectiveness and therapeutic value thereof; to the substantial injury of competition in commerce:

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Held, That such acts and practices were all 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. Clark Nichols for the Commission.

Mr. Philip Cooper, of New York City, for 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 *Rose Heifler* and *Fred Jackson*, individuals, doing business under the firm name of *Heifler & Jackson*, hereinafter referred to as respondents, have 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 respondents, *Rose Heifler* and *Fred Jackson*, are individuals doing business under the firm name of *Heifler & Jackson* and having their office and principal place of business at 740 Bergen Street in the city of Brooklyn, State of New York. The respondents are now, and have been for several years last past, engaged in the business of the sale and distribution of a preparation designated "*Morgan's Pomade*," which respondents represent as a treatment for the hair and scalp. Respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been for several years last past, a course of trade in said preparation by respondents 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 aforesaid business the respondents are now, and have been during all the times mentioned herein, in substantial competition with other individuals and with corporations also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of preparations, treatments and devices designed for use in the treatment of the ailments and conditions for which respondents recommend the use of their said preparation.

PAR. 2. In the course and conduct of their aforesaid business and to induce the purchase of their said preparation, the respondents have distributed and have caused to be distributed and are now distributing and causing to be distributed to members of the purchasing

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public situated in various States of the United States and in the District of Columbia circulars, pamphlets, and other advertising material containing statements and representations relative to the nature of said preparation and its effectiveness in use. Among and typical of the statements and representations by respondents, disseminated as aforesaid, are the following:

It beautifies the hair, it restores it to its original colour, prevents it from falling out, * * * and makes it strong again by the right process through the roots of the hair.

You don't have to state the colour of your hair, as it brings it to its original colour, no matter what colour it was before. This is done by a scientific process.

There is one sure way to destroy dandruff completely. Use Morgan's Pomade * * * After a few treatments most, if not all, of your dandruff will be gone, and with its occasional use every single sign and trace will be completely destroyed. * * * It will have that youthful appearance you have been longing for.

And wonder of wonders, it is not a dye.

Prevents hair from falling. Not a Tint or Dye.

Undoubtedly the finest remedy for Grey or Faded Hair is Morgan's Pomade. This is not a dye, but a special compound which when massaged into the roots of the hair, nourishes it back to its original colour and luster * * *. Scurl is removed by its use and its recurrence prevented.

* * * and it is effective in all cases, restoring the colour where grey, no matter what the previous colour of the hair.

PAR. 3. 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 said preparation is not a tint or dye; that said preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of the said preparation will restore the original natural color to gray hair; that the use of said preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation will prevent the hair from falling out; that said preparation penetrates to the roots of the hair and nourishes the hair; and that said preparation is a competent and effective cure or remedy for, and will prevent, dandruff.

PAR. 4. The aforesaid statements and representations, used and disseminated by respondents in the manner above described, are false, misleading and deceptive. In truth and in fact said preparation, "Morgan's Pomade," contains lead and sulphur and is a lead and sulphur dye. Said preparation, when applied to gray hair, dyes the exterior of the hair shaft and the color produced by its use is not a natural color, but is artificial and produced through the use of a dye. The use of said 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 said preparation does not supply to the hair shaft the color pigments, a deficiency of which materials causes gray hair. The use of said preparation will not prevent the hair from falling out. Said preparation is not a cure or remedy for, and will not prevent, dandruff. Said preparation will not penetrate to the roots of the hair and it will not nourish the hair.

Applications of said preparation to the scalp may be injurious to the health of the user thereof, particularly in the event that said preparation is applied to skin on which there are lesions which have broken the continuity of the integument. The aforesaid advertisements by respondents contain no statement or statements to the effect that said preparation when applied to the scalp may be injurious. Such unqualified advertisements serve as a representation by respondents that such preparation is harmless and will produce no injurious effect when applied to the scalp. The aforesaid advertisements by respondents are therefore misleading and deceptive in that they fail to reveal that said preparation may be injurious to health when applied to the scalp.

PAR. 5. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, with respect to the therapeutic value and effectiveness of their preparation sold and distributed under the trade name of Morgan's Pomade, 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 statements and representations are true, and has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation. As a result, trade has been diverted unfairly to the respondents from their competitors, who are likewise engaged in the sale and distribution in commerce, between and among the several States of the United States and in the District of Columbia, of preparations, treatments and devices for use in the treatment of ailments, diseases, and conditions for which respondents recommend their said product, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations, treatments, and devices. In consequence thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the several States of the United States and the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competi-

tion in commerce 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 September 14, 1939, issued, and on September 14, 1939, served its complaint in this proceeding upon the respondents, Rose Heifler and Fred Jackson, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts or practices in commerce, in violation of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondents' answer, the Commission by order entered herein, granted respondents' 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 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 substitute answer, and the Commission having duly considered the matter, and now being 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, Rose Heifler and Fred Jackson, are individuals doing business under the firm name of Heifler & Jackson and their business address is 740 Bergen Street, in the city of Brooklyn, N. Y. The respondents are now, and have been for several years last past, engaged in the business of selling and distributing a preparation under the trade name of "Morgan's Pomade," which is represented by the makers thereof and by the respondents as a treatment for the scalp and hair.

PAR. 2. The respondents, in the course and conduct of said business, have caused such preparation, when sold, to be mailed or shipped to the purchasers thereof, located at various points in the several States of the United States, other than the State from which said shipments are made, and in the District of Columbia.

PAR. 3. In the course and conduct of such business, the respondents are, and have been, during all the time mentioned in the complaint, in substantial competition with other persons, and with corporations, firms, and partnerships engaged in the sale and distribution in com-

merce, as "commerce" is defined in the Federal Trade Commission Act, of similar treatments and devices, designed for, and useful in the treatment of, the scalp and hair. Among said competitors are many who do not, in any manner, misrepresent their treatments or devices.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their said preparation, the respondents have distributed, and are now distributing, and are causing to be distributed to members of the purchasing public, circulars, pamphlets and other advertising material, containing statements and representations relative to said preparation and its effectiveness in use. Among and typical of such statements and representations are the following:

It beautifies the hair, it restores it to its original colour, prevents it from falling out, * * * and makes it strong again by the right process through the roots of the hair.

You don't have to state the colour of your hair, as it brings it to its original colour, no matter what colour it was before. This is done by a scientific process.

There is one sure way to destroy dandruff completely. USE MORGAN'S POMADE. * * * After a few treatments, most, if not all, of your dandruff will be gone, and with its occasional use every single sign and trace will be completely destroyed. * * * It will have that youthful appearance you have been longing for.

And wonder of wonders, it is not a dye.

Prevents hair from falling. NOT A TINT OR DYE.

Undoubtedly the finest remedy for GREY or FADED HAIR is MORGAN'S POMADE. This is not a dye, but a special compound which when massaged into the roots of the hair, nourishes it back to its original colour and luster * * *. SCURF is removed by its use and its recurrence prevented.

* * * and it is effective in all cases, restoring the colour where grey, no matter what the previous colour of the hair.

PAR. 5. Through the use of the aforesaid statements and representations, the respondents represent, directly, or by implication, that said preparation is not a tint or dye; that said preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of said preparation will restore the original natural color to gray hair; that the use of said preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation will prevent the hair from falling out; that said preparation penetrates to the roots of the hair and nourishes the hair; that said preparation is a competent and effective cure or remedy for, and will prevent dandruff.

PAR. 6. The aforesaid statements and representations, used and disseminated by the respondents in the manner above described, are false, misleading and deceptive. In truth and in fact, said prepara-

tion, "Morgan's Pomade," contains lead and sulphur and is a lead and sulphur dye. Said preparation, when applied to gray hair, dyes the exterior of the hair shaft and the color produced by its use is not a natural color, but is artificial and produced through the use of a dye. The use of said 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 said preparation does not supply to the hair shaft the color pigments, a deficiency of which material causes gray hair. The use of said preparation will not prevent the hair from falling out. Said preparation is not a cure or remedy for, and will not prevent, dandruff. Said preparation will not penetrate to the roots of the hair and it will not nourish the hair.

Applications of said preparation to the scalp may be injurious to tender skin or skin on which there are lesions which have broken the continuity of the integument. The aforesaid advertisements contain no statements to the effect that application of the preparation to a tender skin or to a skin on which there are lesions which have broken the continuity of the integument, may be injurious. Such unqualified advertisements serve as a representation that such preparation, when applied to the aforementioned skin, is harmless and will produce no injurious effect when applied to such tender skin or skin broken by lesions.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, with respect to the therapeutic value and effectiveness of their preparation sold and distributed under the trade name of Morgan's Pomade, 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 statements and representations are true, and has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation. As a result trade has been diverted unfairly to the respondents from their competitors, who are likewise engaged in the sale and distribution in commerce, between and among the several States of the United States and in the District of Columbia, of preparations, treatments and devices for the use in the treatment of ailments, diseases, and conditions for which respondents recommend their said product, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations, treatments and devices. In consequence thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Rose Heifler and Fred Jackson, trading as Heifler & Jackson, are all to the prejudice of the public and of the respondents' competitors, and constitute unfair methods of competition in commerce and 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 the respondents, in which answer respondents admit all the material allegations of the complaint set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Rose Heifler and Fred Jackson, or either of them, their 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 advertisements 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 preparation containing drugs now designated by the name "Morgan's Pomade," or any other preparation, composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under the same name or any other name, or disseminating, or causing to be disseminated, any advertisements by any means for the purpose of inducing, or which are 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 through implication, that said preparation is not a tint or dye; that its application causes the hair to change its color without dyeing; that the use of said preparation will restore the original color to gray hair; that its application supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation prevents the hair from falling out; that said preparation when applied to the hair and scalp, penetrates into the roots of the hair and enriches the hair; that said preparation is a competent and effective cure or remedy for

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dandruff; or which advertisements fail to reveal that the application of "Morgan's Pomade" to tender, injured or broken skin may result in serious injury to the health of the user.¹

It is further ordered, That the respondents shall, within 60 days after 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.

¹ Language immediately preceding, beginning with words, "or which advertisements fail," was stricken by Commission order dated November 5, 1940.

Syllabus

IN THE MATTER OF

BLANCHE KAPLAN, TRADING AS PROGRESSIVE MEDICAL COMPANY AND LADIES AID COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4002. Complaint, Jan. 30, 1940—Decision, Apr. 15, 1940

Where an individual engaged, as Progressive Medical Co. and as Ladies Aid Co., in sale and distribution of her Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength medicinal preparations; in advertisements thereof which she disseminated and caused to be disseminated through the mails and through booklets, circulars, and other printed or written matter distributed in commerce among the various States, and by other means in commerce, and otherwise and which were intended and likely to induce purchase of her said products—

- (a) Represented that her said preparations were cures or remedies for delayed menstruation, and nonirritating, mild, efficient, and specific treatments thereof, and would quickly stimulate the menstrual flow, facts being they were not a cure or remedy for said condition and did not constitute nonirritating, mild, efficient, and specific treatments therefor, and would not accomplish results which she claimed, and were not safe and harmless, in that they contained powdered aloes, ergotin, and a number of other drugs in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and might result in gastrointestinal disturbances leading to excessive uterine hemorrhage in nonpregnant women, and in cases where said preparations were used to interfere with normal course of pregnancy, might result in uterine infection with extension to other pelvic and abdominal structures and to the blood stream, causing condition known as septicemia or blood poisoning, and lead to other serious conditions and serious or irreparable loss or injury to health; and
- (b) Failed to reveal, in said advertisements of such preparations, that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might result in serious or irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations and advertisements were true, and of inducing portion of such public, because of such erroneous and mistaken belief, to purchase 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 deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.