

IN THE MATTER OF
RESEARCH ASSOCIATES, INC., AND DERMAGELL, INC.

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

Docket 3651. Complaint, Nov. 19, 1938—Decision, May 11, 1940

Where a corporation engaged in sale and distribution of organic soap compound as cleansing cream, under designation "Dermagell," to purchasers at their respective points of location in various other States and in the District of Columbia, in competition with others engaged in sale or distribution of soaps, cleansing creams, and other products designed, intended, and used for cleansing skin and hair; and a concern which, at time herein involved, owned substantial majority of outstanding stock thereof and controlled and directed its business policies, practices, and activities; in advertisements of its said "Dermagell" which, then controlled as above set forth, said corporation caused to be disseminated through newspapers and other publications circulating among the various States and in the District of Columbia—

Represented that said preparation was the "discovery of the century," which soothed and healed, and penetrated innermost recesses of the pores of the skin, and that use thereof would leave skin and scalp youthfully fresh and invigorated and give any woman a soft, clear, smooth complexion or beautiful hair, and that the benefits obtained from its use were distinct and lasting, and that it actually protected the skin and prevented or cured skin disorders;

Facts being said product was not substantially different from other products or soap designed for similar use, and was not the "discovery of the century," but ingredients thereof were well known and had been used for many years in preparation of soaps and similar products, and, while its fatty acids, stearic acid, myristic acid, and carbitol, and its mild basic alkali, triethanolamine, were a little different from usual sodium or potassium soaps, it was essentially the same as any other soap, and possessed no special soothing or healing properties and would not penetrate the innermost recesses of the skin, use of said product would not leave skin and scalp youthfully fresh and invigorated nor give any woman a soft, clear, smooth complexion and beautiful hair, and benefits obtained from such use were not distinct and lasting, and use thereof would not prevent or cure skin disorders or diseases;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true and that their said product possessed properties claimed and represented and would accomplish results indicated, and to cause substantial portion of such public, because of erroneous and mistaken belief thus engendered, to purchase their said compound and with result that trade was diverted unfairly to them from their competitors in commerce between and among the several States and in the District of Columbia who truthfully advertise the effectiveness in use of their respective products:

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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. Randolph E. Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Ralph E. Parker, of Potter, Pierce & Scheffler, of Washington, D. C., 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 Research Associates, Inc., a corporation, and Dermagell, Inc., a corporation, 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. Respondent, Research Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its office and principal place of business at 3400 Nebraska Avenue NW., in the city of Washington, District of Columbia. Respondent, Dermagell, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its office and principal place of business formerly at 3400 Nebraska Avenue NW., and now at 52 O Street NW., in the city of Washington, District of Columbia. Respondent, Research Associates, Inc., owns a substantial portion of the outstanding shares of stock of respondent, Dermagell, Inc. Said corporate respondents act together and in cooperation with each other in carrying out the sales activities, practices, and policies herein set forth.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of selling and distributing an organic soap compound which is a cleansing cream and is designated as "Dermagell." Respondents cause the said product, when sold by them, to be transported from their aforesaid places of business in the District of Columbia, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of such shipment and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce among and

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

PAR. 3. Respondents are engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing soaps, cleansing creams, and other products designed, intended, and used for the cleansing of the skin and hair. Among such competitors in said commerce are many who do not in any manner misrepresent the properties or the efficacy of their respective soaps and other products.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their said product, respondents have caused false advertisements, containing representations and claims with respect to the properties of their said product and the results that may be expected to be obtained from the use thereof, to be disseminated by advertisements inserted in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia, and by continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto located in various States of the United States and in the District of Columbia. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Dermagell is a 3-purpose Cleansing Cream and Shampoo—so efficient—so utterly different from anything heretofore obtainable that authorities proclaim it “the discovery of the century.”

Dermagell soothes and heals as it penetrates the innermost recesses of the tender pores without unpleasant reaction.

Dermagell vanishes instantly—like magic when rinsed in hot or cold water, leaving the skin and scalp youthfully fresh and invigorated.

Dermagell is not expensive. It is within easy reach of the most modest budget, meaning that no woman interested in a soft, clear, smooth complexion and beautiful hair need deny herself its distinct and lasting benefits.

At last Science comes to the aid of beauty. That is the welcome news you will find in next Sunday's Herald. For the first time Washington will learn of Dermagell * * * the marvelous new three-purpose skin cleanser and shampoo. Dermagell looks much like ordinary cleansers * * * yet the moment you place it on your face you'll see a swift and dramatic change. Here is an aid to beauty the like of which you've never seen before.

Dermagell cannot irritate the most sensitive skin for it is scientifically balanced to correspond to the base range of your own blood. No other skin cleanser can say this. Dermagell not only cleanses thoroughly and gently * * * it actually protects your skin. Dermagell prevents and cures many skin disorders.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondents' product and its effectiveness in use, the respondents have represented, among other things, that said product is different from any other product designed for similar usage and is "the discovery of the century"; that said product possesses soothing and healing properties; that it penetrates the innermost recesses of the pores of the skin; that the use of said product leaves the skin and scalp youthfully fresh and invigorated; that any woman interested in a soft, clear, smooth complexion and beautiful hair will obtain distinct and lasting benefits from the use of such product; and that the use of such product prevents and cures many skin disorders.

PAR. 6. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue. In truth and in fact, such product is not substantially different from other products designed for similar usage and is not the discovery of the century. The ingredients contained in such product are well known and have been used for many years in the preparation of soaps and similar products. Said product possesses no soothing or healing properties and will not penetrate the innermost recesses of the pores of the skin. The use of such product will not leave the skin and scalp youthfully fresh and invigorated, nor will the use thereof give any woman a soft, clear, smooth complexion and beautiful hair. The benefits obtained from such use are not distinct and lasting. The use of such product will not prevent or cure skin disorders.

PAR. 7. The use by respondents of the foregoing false and misleading statements, representations, and advertisements with respect to said product disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondents' said product possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. As a result, trade has been diverted unfairly to the respondents from their competitors in similar commerce who truthfully advertise the effectiveness in use of their respective soaps, cleansing creams, and other products. In consequence thereof, injury has been, and is now being, done by respondents to

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competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of November 1938, issued its complaint in this proceeding and caused same to be served on the respondents Research Associates, Inc., and Dermagell, Inc., charging them with the use of unfair methods of competition in commerce in violation of said act. After the issuance of said complaint, neither of the respondents having filed answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by B. G. Wilson, attorney for the Commission, before Randolph E. Preston, 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. Neither of said respondents offered any testimony on other evidence at said hearing, but both of the respondents were represented, the respondent Research Associates, Inc., appearing by Ralph E. Parker, its attorney, and respondent Dermagell, Inc., appearing by C. G. Gilbert in the capacity of its president. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence and brief of counsel for the Commission in support of the allegations of said complaint, no brief having been filed in opposition to the allegations of the complaint or request for oral argument having been made; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Research Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its offices and principal place of business at 3400 Nebraska Avenue NW., in the city of Washington, District of Columbia.

Respondent Dermagell, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its office and principal place of business at 52 O Street, NW., in the city of Washington, District of Columbia. Respondent Research Associates, Inc., at the time of the circulation of the advertisements hereinafter set out and referred to, owned a substantial majority of the outstanding shares of stock of Dermagell, Inc., and controlled and directed the business policies, practices, and activities of respondent Dermagell, Inc.

Respondent Research Associates, Inc., on or about May 11, 1938, divested itself of a goodly part of the stock of Dermagell, Inc., by the sale thereof to parties not named as respondents in this proceeding, and since about May 11, 1938, has not held a controlling interest in respondent Dermagell, Inc., and at the present time owns no stock at all in said respondent Dermagell, Inc., and does not control or direct its business policies, practices, and activities.

PAR. 2. Respondent Dermagell, Inc., prior to and during the year 1938, was engaged in the business of selling and distributing an organic soap compound which is a cleansing cream and is designated as "Dermagell." It caused the said product, when sold, to be transported from its aforesaid place of business in the District of Columbia, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of such shipment, and in the District of Columbia. Respondent Dermagell, Inc., maintained, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Dermagell, Inc., has been engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with partnerships, firms, and individuals selling and distributing soaps, cleansing creams, and other products designed, intended, and used for the cleansing of the skin and hair.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of said product, respondent Dermagell, Inc., in 1937 and during the time when its policies, practices, and activities were controlled by respondent Research Associates Inc., caused false advertisements, containing representations and claims with respect to the properties of said product and the results that may be expected to be obtained from the use thereof, to be disseminated by means of newspapers and other publications having a circulation among and between the various States of the United States

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and in the District of Columbia. Among and typical of the representations so used and disseminated as aforesaid are the following:

Dermagell is a 3-purpose Cleansing Cream and Shampoo—so efficient—so utterly different from anything heretofore obtainable that authorities proclaim it “the discovery of the century.”

Dermagell soothes and heals as it penetrates the innermost recesses of the tender pores without unpleasant reaction.

Dermagell vanishes instantly—like magic when rinsed in hot or cold water, leaving the skin and scalp youthfully fresh and invigorated.

Dermagell is not expensive. It is within easy reach of the most modest budget, meaning that no woman interested in a soft, clear smooth complexion and beautiful hair need deny herself its distinct and lasting benefits.

At last Science comes to the aid of beauty. That is the welcome news you will find in next Sunday's Herald. For the first time Washington will learn of Dermagell * * * the marvelous new three-purpose skin cleanser and shampoo. Dermagell looks much like ordinary cleansers * * * yet the moment you place it on your face you'll see a swift and dramatic change. Here is an aid to beauty the like of which you've never seen before.

Dermagell cannot irritate the most sensitive skin for it is scientifically balanced to correspond to the base range of your own blood. No other skin cleanser can say this. Dermagell not only cleanses thoroughly and gently * * * it actually protects your skin. Dermagell prevents and cures many skin disorders.

PAR. 5. The product “Dermagell” is not substantially different from other products or soaps designed for a similar use. It is not “the discovery of the century.” Its ingredients are well known and have been known and used for many years in the preparation of soaps and similar products. Soap is a sodium or potassium salt of fat, and fats are esters—chemical compounds of fatty acid and glycerol; the important property of soap being that it can break down in water with the liberation of mild alkali, having cleansing properties in the removal of grease and dirt.

The ingredients contained in the product “Dermagell,” which is a semisolid preparation, consist of roughly 42 percent water; 21 percent myristic acid; nearly 7 percent stearic acid; an insignificant amount of lanolin; 11 percent carbitol, which is a substitute for glycerol though chemically a little different from the ordinary glycerine; 16 percent triethanolamine, which is a mild alkali; and a little perfume. Its fatty acid, stearic acid, myristic acid, and carbitol, and its mild basic alkali, triethanolamine, are a little different from the usual sodium or potassium soaps, but essentially it is the same as any other soap.

“Dermagell” possesses no special soothing or healing properties and will not penetrate the innermost recesses of the skin; the use of said product will not leave the skin and scalp youthfully fresh and invigorated, nor will its use give any woman a soft, clear, smooth

complexion and beautiful hair; the benefits obtained from such use are not distinct and lasting, and the use of such product will not prevent or cure skin disorders or diseases.

PAR. 6. The publication and use by said respondents Dermagell, Inc., and Research Associates, Inc., of the foregoing false and misleading statements, representations, and advertisements with respect to said product, disseminated as aforesaid, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and that respondents' said product possesses the properties claimed and represented, and will accomplish the results indicated, and to cause a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said product. As a result, trade has been diverted unfairly to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia, who truthfully advertise the effectiveness in use of their respective soaps, cleansing creams, and other products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein alleged 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, testimony and other evidence taken before Randolph E. Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no evidence having been offered by respondents, brief filed herein by 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, Research Associates, Inc., and Dermagell, Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of an organic soap compound formerly known as "Dermagell," or any other preparation or compound composed of similar ingredients or possessing similar proper-

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ties, whether sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That said preparation is the discovery of the century; that respondents' preparation soothes and heals or that it penetrates the innermost recesses of the pores of the skin; that its use will leave the skin and scalp youthfully fresh and invigorated; that its use will give any woman a soft, clear, smooth complexion or beautiful hair; that the benefits obtained from its use are distinct and lasting; that it actually protects the skin; or that it prevents or cures skin disorders.

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.

Syllabus

IN THE MATTER OF
DR. VAN VLECK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3988. Complaint, Jan. 4, 1940—Decision, May 13, 1940*

Where a corporation engaged in sale and distribution of its "Dr. Van Vleck's Ointment," "Dr. Van Vleck's Muco Cones," and "Dr. Van Vleck's Pills" for piles, to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and circulars and other printed or written matter distributed in commerce among the various States, and otherwise, and also through letters sent to potential customers or those who had already purchased, designed to induce such persons to buy its said products or purchase same in larger quantities, and through pamphlets and circulars containing purported testimonials from diverse and sundry persons designed to induce potential customers to purchase same or buy larger quantities thereof, and which advertisements were intended and likely to induce purchase of its said products—

Represented that its said preparations, used conjointly, were an effective and scientific cure and remedy for, and a competent and effective treatment of, piles, and that application thereof conjointly constituted an "Absorption Treatment" which removed piles without surgical aid, and that their use insured immediate and lasting relief with no return of suffering, and would remove or correct the cause of such condition;

Facts being such preparations, whether used conjointly or separately, were not cures or remedies for said condition, and did not constitute competent or effective treatment therefor, other than to give some small degree of relief by means of their analgesic qualities, and prevention of constipation, and, when used conjointly, did not remove piles, bring immediate or lasting relief, nor remove or correct cause of said condition, in that such treatment would not absorb, remove, or completely eradicate protruding external or internal hemorrhoidal protuberances;

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 said public, because of such erroneous and mistaken belief, to purchase its said drug-containing medical preparations:

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. W. M. King for the Commission.

Bisbee, McKone, Badgley & Kendall, of Jackson, Mich., for respondent.