

IN THE MATTER OF
LADY ESTHER, LTD.

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

Docket 3917. Complaint, Oct. 6, 1939—Decision, May 31, 1940

Where a corporation, engaged in sale and distribution of cosmetics and other toilet preparations, including its Lady Esther Face Cream, to wholesale and retail purchasers in other states and to members of the public direct, in substantial competition with others engaged in the distribution and sale of face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as its said Lady Esther Face Cream in commerce among the various States; in its advertisements of its said face cream in newspapers and other periodicals of general circulation and in the various States and in said District, and in circulars and other printed or written matter distributed in commerce, and through broadcasts from radio stations of extra-state audience, and in statements and other advertisements which it disseminated and which were intended and likely to induce purchase of its aforesaid face cream in commerce—

- (a) Represented, directly or through implication, that its said Lady Esther Face Cream penetrated the skin and to the bottom of the pores thereof and removed dirt from the outside which had gotten into or under the skin and filled said pores, through its action in sinking into the pores and then flushing out waste matter therein, and that the method of cleaning the skin of the face by the use of its said cream was different from that of other skin-cleaning preparations in that, unlike the others, it cleaned more than the exterior openings of the pores.

Facts being, it did not thus penetrate the skin or have any unique or unusual or active penetrative properties in relation thereto, outside dirt does not get into or under the skin or become imbedded therein, etc., as above set forth by it, its said cream will not remove such dirt, if so located, or cleanse the pores below the exterior openings thereof, and principal effect of its said product is to cleanse outer surface of skin and exterior openings of pores, as do many other skin cleaners, and its said method was no different in such general respect from that of such others, and any absorptive and lubricating effect as distinguished from penetrative action of said product is of temporary duration, determined by such factors as length of time lubricating ingredients remain on skin and amount of absorption of such ingredients.

- (b) Represented that its said product would overcome, correct or cure dry skin and was as efficacious on an oily skin as on a dry one, and that cause of an oily skin was same as that of a dry one, and that soap and water were injurious to the skin and dried it, and that a dry skin was an old one and the cause of all wrinkles, which tiny lines became, and that use of said product supplied a dry skin with what it needed to overcome or cure such condition;

Facts being that its said product would not overcome, correct or cure a dry skin or do more in correcting it than furnish, as aforesaid, temporary supply of lubrication which was not identical with secretions supplied by the skin and

required constant renewal of applications, if such lubrication were to be maintained, and, while its said product might be used on an oily skin and would clean such a skin at least to same extent as a dry one, it was not otherwise as efficacious on the former as on the latter, and cause of two was not the same, soap and water are not injurious to skin and do not dry it except temporarily, and its said product does not supply dry skin with what it needs to overcome or cure such condition, and dry skin is not an old one nor such a skin the cause of all wrinkles, nor is it true, as set forth by it, that all tiny lines become wrinkles, and dry skin, lines and wrinkles may be due to causes such as advancing age, disease, worry and conditions of the muscles and tissues underlying the skin and other causes upon which its product would have no effect.

(c) Represented, as aforesaid, that blackheads are imbedded dirt and that its said product would remove blackheads and correct the cause thereof, facts being, blackheads are waxy skin secretions, exterior surfaces of which are discolored by exterior dirt, and said preparation will not remove them as distinguished from removing superficial dirt from the outside surfaces thereof, nor correct their cause.

(d) Represented, as aforesaid, that said product would prevent or remove wrinkles or lines of the face and that use thereof would refine the pores of the skin and correct or remove cause of enlarged pores and remove from the skin blemishes or rough spots, and that users of said cream were free from a rough skin, and that its use refreshed tired cells and brought new life thereto and safeguarded beauty glands and brought them back to activity;

Facts being that while its said product might remove superficial accumulations of dirt from pore openings, help nature refine the pores and, to the extent that superficial pore enlargements might be due to such accumulations, serve to reduce the same, it would not refine the pores or correct or remove the cause of enlarged pores nor remove from the skin blemishes or rough spots other than those due solely to dryness thereof, and it would not banish roughness permanently, not all users of its cream are free from rough skin, and it did not refresh tired cells or bring new life thereto nor safeguard so-called beauty glands, if such there be, nor bring same back to activity, and would not affect the skin advantageously otherwise than as herein set forth, many unfavorable conditions of which are result of internal conditions such as dietary excesses or deficiency, nervous disorders, drug rashes, glandular disturbances or other conditions in regard to which its said product would have no appreciable effect and which can be effectively treated only by removing the cause thereof, on which its said product is without effect;

(e) Represented that its said cream was a solvent of dust, soot, dirt, dead skin cells or various forms of dirt and waste matter that soil the skin;

Facts being said product was not a solvent of dust, dead skin cells or other various forms of dirt and waste matter that soil the skin; and

(f) Falsely represented that results from use of its said cream were guaranteed;

With tendency and capacity to mislead purchasers and prospective purchasers of its said product into the erroneous and mistaken belief that such representations were true, as hereinabove set forth, and to induce them to purchase said cream by reason thereof, and with the result that trade was thereby diverted unfairly to it from competitors engaged in the sale in commerce of face creams, soaps and cosmetics of various kinds, including those who, in the sale of their said preparations and products, do not similarly or in any

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manner misrepresent the same or matters pertaining thereto; to their substantial injury in commerce:

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 in commerce and unfair and deceptive acts and practices therein.

Mr. Donovan R. Divet for the Commission.

Rogers, Ramsay & Hoge, of New York City, for respondent.

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 Lady Esther, Ltd., a corporation, 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, Lady Esther, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 7171 West 65th Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 3 years last past engaged in the sale and distribution in commerce between and among the various States of the United States of cosmetics and other toilet preparations. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause its said cosmetics and other toilet preparations to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the purchasers thereof in such other States. The usual course of dealing of respondent in its business as aforesaid is to sell its products to wholesale and retail stores through which they are eventually sold to members of the public. Respondent also sells its products as aforesaid direct to members of the public. Among the products so sold as aforesaid is a face cream known and described as Lady Esther Face Cream.

PAR. 3. During the time above mentioned, other individuals, firms and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States of the United States and in the Dis-

trict of Columbia of face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as respondent's said Lady Esther Face Cream. Respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States in the sale of its said Lady Esther Face Cream with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said Lady Esther Face Cream, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said face cream; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements and false and misleading statements concerning its said face cream, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said face cream in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false and misleading statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. What you want is *deep* cleansing! Many methods only "clean off" the skin. They do not clean it *out*! * * * What you want is a cream that does more than "grease" the surface of your skin. You want a cream that *penetrates the pores*! Such a cream, distinctly, is Lady Esther Face Cream. It is a cream that gets below the surface—into the pores. * * *

2. There is one sure way to remove that underneath dirt and that is to use a cream that penetrates the pores. * * *

3. * * * Many methods are merely surface methods. They take off only the top dirt and leave the imbedded dirt untouched. What you want is deep-reaching action—a cleansing out of the stubborn, buried dirt. * * *

4. * * * Demand a cleanser that goes below the surface. Insist upon a cleanser that gets into the pores, *deeply into the pores*! Lady Esther Face Cream is a pore-deep cleanser. * * *

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5. * * * It cleanses deeply, to the very bottom of the pores. It doesn't clean just the surface of your skin—it goes below the surface and removes hidden dirt which ordinary cleansing methods fail to reach. * * *

6. * * * it's a penetrating cream, which gets *into* your skin. * * *

7. I say that my cream will remove that deeply imbedded dirt that is the cause of large pores and black-speck blemishes. * * *

8. Those little black specks that keep showing up in your skin—do you know what they really are, * * * They're imbedded dirt—dirt that has found its way deeply into your pores * * * When your pores are completely cleansed of the plugging matter, blackheads automatically disappear. Also your pores automatically come down in size. Responding to Nature, they reduce themselves to their original, invisible smallness.

9. * * * Lady Esther Face Cream loosens blackheads, floats out the stubborn dirt that laughs at your surface cleanser * * *

10. * * * It removes the cause of enlarged pores and blackheads * * *

11. * * * At the same time as Lady Esther Face Cream is unburdening your pores, it is *also* lubricating your skin. It is resupplying it with a fine oil that combats dryness and keeps the skin youthfully soft and smooth * * *

12. * * * Keep up this soothing Cleansing—(with Lady Esther Face Cream)—and you'll see those faint lines fade away—because your sebaceous glands will be back on the job—then you can say goodbye forever to dry skin.

13. * * * Lady Esther Cream contains a fine oil that overcomes dryness and roughness * * *

14. * * * "Don't you believe dry skin isn't serious! It's the dry skin that invites the tiny lines that may grow into wrinkles * * *" * * * Lady Esther Cream * * * brings back that soft dewy-fresh look which proves that the dry parched skin is smooth and pliant once more * * *

15. A dry skin is an old skin.

16. Lady Esther Face Cream is an excellent corrective of dry skin * * *

17. * * * Supplies Dry Skin with What It Needs * * *

18. * * * You see, dryness and oiliness are just different symptoms of the *same* trouble. And they are both easy to overcome with Lady Esther Cream * * *

19. * * * Lady Esther Cream, * * * counter-acts the very cause of dryness * * *

20. * * * Dry patches and tiny lines will start to disappear * * *

21. * * * easily changes a dry, dingy skin into a smooth one * * *

22. * * * "It's the dry skin that invites the tiny lines that may grow into wrinkles * * *" * * * Lady Esther Cream * * * brings back that soft dewy-like look which proves the dry parched skin is smooth and pliant once more * * *

23. * * * Remember a dry skin wrinkles * * *

24. * * * If you want to banish dry skin write me tonight and I will send you a tube of Lady Esther Face Cream * * *

25. * * * Lady Esther Cream * * * helps nature refine your pores * * *

26. * * * Lady Esther guarantees results * * *

27. * * * Cleansing the pores as thoroughly as it does, it allows them to function freely again—to open and close—as Nature intended. This automatically permits the pores to reduce themselves to their normal, invisible size * * *

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28. * * * it keeps the glands in condition to do their health-building work.

29. * * * blotches and large pores which cause such untold suffering to young girls—very often yield to the penetrating action of Lady Esther Face Cream * * *

30. * * * it supplies the tissues with a delicate softening oil * * *

31. * * * Lady Esther Cream * * * sinks into the dry tissues, and brings new life to your skin * * *

32. * * * It penetrates each tiny pore, flushes out old accumulations of waste which made your skin bumpy * * *

33. * * * As soon as it touches your skin, it sinks into your pores, and dissolves that buried waste, just like sunshine melting snow. It floats it all to the surface for you to wipe away * * *

34. * * * my cream cleanses your skin, * * * smooths out those rough spots, refreshes its tired cells * * *

35. * * * brings new life to the dry cells * * *

36. * * * it goes to work on the imbedded dirt—that stiff waxy matter that is a combination of waste from the body, dust, soot and dead skin cells. It softens and dissolves this waxy matter * * *

PAR. 5. Respondent makes and has made the foregoing statements in its advertising matter, as well as many others of similar import, which are misleading in that they represent or imply:

1. That Respondent's said face cream penetrates the skin; that it penetrates to the bottom of the pores of the skin; that it penetrates into and below the skin; and that it has unique, unusual and active penetrative properties in relation to the skin.

2. That dirt from the outside gets into and under the skin, is imbedded therein and fills the pores to the bottom and that respondent's face cream will remove the same.

3. That respondent's cream dissolves dirt and waste matter in the pores of the skin.

4. That respondent's cream sinks into the pores of the skin and then by reverse action flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin, while other preparations clean only the surface.

6. That blackheads are imbedded dirt.

7. That respondent's cream will correct, overcome or banish a dry skin.

8. That respondent's cream is equally efficacious on an oily skin as on a dry skin and that the cause of both conditions is the same.

9. That the use of respondent's cream will prevent and remove wrinkles and lines in the face.

10. That respondent's cream will remove blackheads as distinguished from removing superficial dirt from the outside surface thereof.

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11. That respondent's cream will refine the pores of the skin and correct enlarged pores.

12. That respondent's cream will remove rough spots and blemishes from the skin.

13. That soap and water are injurious to the skin and that they dry the skin.

14. That respondent's cream supplies dry skin with what it needs to overcome and cure such condition.

15. That users of respondent's cream never suffer from rough skin and that it will banish roughness.

16. That respondent's cream refreshes tired cells and brings new life to the cells and to the skin.

17. That respondent's cream safeguards beauty glands and brings them back to activity.

18. That dry skin is an old skin.

19. That dry skin is the cause of wrinkles and that tiny lines become wrinkles.

20. That results are guaranteed.

21. That respondent's cream removes and corrects the cause of enlarged pores and blackheads.

22. That respondent's cream is a solvent of and dissolves the various forms of dirt and waste matter that soil the skin.

PAR. 6. In truth and in fact respondent's face cream does not penetrate the skin or penetrate to the bottom of the pores of the skin or into and below the skin; respondent's cream does not have any unique or unusual or active penetrative property in relation to the skin; dirt from the outside does not get into or under the skin or become imbedded therein or fill the pores to the bottom and respondent's cream will not remove dirt if so located; respondent's cream will not dissolve dirt or waste matter in the pores of the skin; skin cleansers generally, including respondent's said cream, clean the surface of the skin, including the minute exterior openings of the pores, and respondent's cream is no different in this general respect from other skin cleansing preparations; blackheads are not imbedded dirt but are waxy skin secretions the exterior surfaces of which are discolored by exterior dirt; respondent's cream will not overcome, correct, or banish a dry skin but merely furnishes a temporary supply of lubrication, respondent's cream is not equally efficacious on oily skin as on a dry skin; the cause of an oily skin is not the same as the cause of a dry skin; respondent's cream will not prevent or remove wrinkles or lines in the face, it will not remove blackheads as distinguished from removing superficial dirt from the outside surfaces thereof; it will not refine the pores of the skin or correct enlarged pores; it will not remove rough spots or

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blemishes from the skin; soap and water are not injurious to the skin and do not dry the skin; respondent's cream does not supply dry skin with what it needs to overcome or cure the condition; it is not true that all users of respondent's cream do not suffer from a rough skin or that said cream will banish roughness since any lubricating effect it may have is only temporary and superficial; respondent's cream does not refresh tired cells or bring new life to the cells or to the skin; respondents' cream does not safeguard so-called beauty glands or bring them back to activity if, in fact, such glands exist; it is not true that a dry skin is an old skin; a dry skin is not the cause of wrinkles nor is it true that tiny lines become wrinkles; respondent does not in fact guarantee the results claimed for the use of its cream; respondent's cream does not remove and correct the cause of enlarged pores and blackheads; generally speaking, respondent's cream is not a solvent of and does not dissolve the various forms of dirt and waste matter that soil the skin.

PAR. 7. The principal effect of respondent's said cream is to cleanse the outer surface of the skin. It also serves as a lubricant but such lubricating effect is of temporary duration and lasts only as long as the lubricating ingredients remain on the skin. This necessitates constant renewal of applications of the cream if such lubrication is to be maintained. Such treatment merely supplements the oil supplied by the skin itself but the lubrication supplied by respondent's cream is not identical with the secretions of the skin. Respondent's cream does not stimulate the action of the oil glands in the skin and has no effect of correcting the cause of the deficiency in secretion of the glands of the skin. Many unfavorable skin conditions are the result of internal conditions of the body such as excesses or deficiencies of dietary intake, unbalanced diet, too great or too little consumption of certain kinds of food, faulty or upset metabolism, nervous disorders, glandular disturbances and other conditions in regard to which respondent's face cream will have little, if any, effect on the resulting skin conditions. Such skin conditions can be effectively treated only by removing the causes thereof. Respondent's cream has no effect on these causes. A dry skin, lines in the face and wrinkles are due to causes such as advancing age, disease, worry, anxiety, overwork, conditions of the muscles and tissues underlying the skin and other causes upon which respondent's face cream will not have any effect. A cream of the general nature of respondent's does not penetrate the skin but may, to a limited extent, be absorbed by the skin. Such absorption, however, is not equivalent to or synonymous with penetration. Respondent's cream is not a solvent of dust, soot or dead skin cells or of various kinds of

organic and inorganic matter which may and do soil the skin of the face.

PAR. 8. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said face cream have had, and now have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations, as herein alleged, are true, and to induce them to purchase said face cream on account thereof. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of face creams, soaps, and cosmetics of various kinds. There are among the competitors of respondent those who in the sale of their preparations and products do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 9. 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 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 the 6th day of October 1939, issued and served its complaint in this proceeding upon said respondent, Lady Esther, Ltd., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 27th day of February 1940, respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Rogers, Ramsay & Hoge, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the

presentation of arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, Lady Esther, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 7171 W. 65th Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of cosmetics and other toilet preparations in commerce between and among the various States of the United States. In the course and conduct of said business during the time aforesaid, respondent has caused, and does now cause, its said cosmetics and other toilet preparations, when sold, to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the purchasers thereof in such other States. The usual course of dealing of respondent in its said business as aforesaid is to sell its products to wholesale and retail stores through which they are eventually sold to members of the public. Respondent also sells its products, as aforesaid, directly to members of the public. Among the products so sold as aforesaid is a face cream known and described as Lady Esther Face Cream.

PAR. 3. In the course and conduct of its said business, respondent now is, and has been during the time above mentioned, in substantial competition with other corporations and with firms and individuals also engaged in the business of distributing and selling face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as respondent's said Lady Esther Face Cream, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its aforesaid business in commerce as herein described respondent, for the purpose of inducing the purchase of said product, Lady Esther Face Cream, has caused advertisements to be placed in newspapers and other periodicals having a general circulation in the various States of the United

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States and in the District of Columbia, and has also published and circulated circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States. Respondent has also broadcast advertising from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in the various States of the United States other than the States in which said broadcasts originated. These advertisements, circulars, and radio broadcasts contain certain statements concerning the efficacy of the product, Lady Esther Face Cream, and the results which may be expected to be obtained from the use thereof. Similar advertising statements are made in other advertisements disseminated for the purpose of inducing, and which are likely to induce, directly or indirectly, purchases of said face cream in commerce as commerce is defined in the Federal Trade Commission Act. Prior to the issuance of the complaint herein, respondent, in said newspaper, periodical, radio, and circular advertisements, made, among others, the following representations:

1. What you want is deep cleansing! Many methods only "clean off" the skin. They do not clean it *out*! * * * What you want is a cream that does more than "grease" the surface of your skin. You want a cream that *penetrates the pores*! Such a cream, distinctly, is Lady Esther Face Cream. It is a cream that gets below the surface—into the pores. * * *

2. There is one sure way to remove that underneath dirt and that is to use a cream that penetrates the pores * * *

3. * * * Many methods are merely surface methods. They take off only the top dirt and leave the imbedded dirt untouched. What you want is deep-reaching action—a cleansing out of the stubborn, buried dirt * * *

4. * * * Demand a cleanser that goes below the surface. Insist upon a cleanser that gets into the pores, *deeply into the pores*! Lady Esther Face Cream is a pore-deep cleanser.

5. * * * It cleanses deeply, to the very bottom of the pores. It doesn't clean just the surface of the skin—it goes below the surface and removes hidden dirt which ordinary cleansing methods fail to reach * * *

6. * * * It's a penetrating cream, which gets *into* your skin * * *

7. I say that my cream will remove that deeply imbedded dirt that is the cause of large pores and black-speck blemishes * * *

8. Those little black specks that keep showing up in your skin—do you know what they really are. * * * They're imbedded dirt—dirt that has found its way deeply into your pores * * * When your pores are completely cleansed of the plugging matter, blackheads automatically disappear. Also your pores automatically come down in size. Responding to Nature, they reduce themselves to their original, invisible smallness.

9. * * * Lady Esther Face Cream loosens blackheads, floats out the stubborn dirt that laughs at your surface cleanser * * *

10. * * * It removes the cause of enlarged pores and blackheads * * *

11. * * * At the same time as Lady Esther Face Cream is unburdening your pores, it is *also* lubricating your skin. It is resupplying it with a fine oil that combats dryness and keeps the skin youthfully soft and smooth * * *

12. * * * Keep up this soothing Cleansing—(with Lady Esther Face Cream)—and you'll see those faint lines fade away—because your sebaceous glands will be back on the job—then you can say goodbye forever to dry skin.

13. * * * Lady Esther Cream contains a fine oil that overcomes dryness and roughness * * *

14. * * * "Don't you believe dry skin isn't serious. It's the dry skin that invites the tiny lines that may grow into wrinkles * * *" * * * Lady Esther Cream * * * brings back that soft dewey-fresh look which proves that the dry parched skin is smooth and pliant once more * * *

15. A dry skin is an old skin.

16. Lady Esther Face Cream is an excellent corrective of dry skin * * *

17. * * * Supplies Dry Skin with What It Needs * * *

18. * * * You see, dryness and oiliness are just different symptoms of the *same* trouble. And they are both easy to overcome with Lady Esther Cream * * *

19. * * * Lady Esther Cream, * * * counteracts the very cause of dryness * * *

20. * * * Dry patches and tiny lines will start to disappear * * *

21. * * * easily changes a dry, dingy skin into a smooth one * * *

22. * * * "It's the dry skin that invites the tiny lines that may grow into wrinkles * * *" * * * Lady Esther Cream * * * brings back that soft dewey-like look which proves the dry parched skin is smooth and pliant once more * * *

23. * * * Remember a dry skin wrinkles * * *

24. * * * If you want to banish dry skin write me tonight and I will send you a tube of Lady Esther Face Cream * * *

25. * * * Lady Esther Cream * * * helps nature refine your pores * * *

26. * * * Lady Esther guarantees results * * *

27. * * * Cleansing the pores as thoroughly as it does, it allows them to function freely again—to open and close—as Nature intended. This automatically permits the pores to reduce themselves to their normal, invisible size * * *

28. * * * It keeps the glands in condition to do their health-building work.

29. * * * blotches and large pores which cause such untold suffering to young girls—very often yield to the penetrating action of Lady Esther Face Cream * * *

30. * * * It supplies the tissues with a delicate softening oil * * *

31. * * * Lady Esther Cream * * * sinks into the dry tissues, and brings new life to your skin * * *

32. * * * It penetrates each tiny pore, flushes out old accumulations of waste which made your skin bumpy * * *

33. * * * As soon as it touches your skin, it sinks into your pores, and dissolves that buried waste, just like sunshine melting snow. It floats it all to the surface for you to wipe away * * *

34. * * * my cream cleanses your skin * * * smooths out those rough spots, refreshes its tired cells * * *

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35. * * * brings new life to the dry cells * * *

36. * * * It goes to work on the imbedded dirt—that stiff waxy matter that is a combination of waste from the body, dust, soot and dead skin cells. It softens and dissolves this waxy matter * * *

PAR. 5. The use by the respondent of the foregoing statements, representations, and advertisements and others of similar import, not herein specifically set forth, disseminated as aforesaid, with respect to Lady Esther Face Cream, has the tendency and capacity to mislead a substantial portion of the purchasing public into the belief:

1. That respondent's said face cream penetrates the skin; that it penetrates to the bottom of the pores of the skin; that it penetrates into and below the skin; and that it has unique, unusual and active penetrative properties in relation to the skin.

2. That dirt from the outside gets into and under the skin, is imbedded therein and fills the pores to the bottom and that respondent's face cream will remove the same.

3. That respondent's cream dissolves dirt and waste matter in the pores of the skin.

4. That respondent's cream sinks into the pores of the skin and then by reverse action flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin, while other preparations clean only the surface.

6. That blackheads are imbedded dirt.

7. That respondent's cream will correct, overcome, or banish a dry skin.

8. That respondent's cream is equally efficacious on an oily skin as on a dry skin and that the cause of both conditions is the same.

9. That the use of respondent's cream will prevent and remove wrinkles and all lines in the face.

10. That respondent's cream will remove blackheads as distinguished from removing superficial dirt from the outside surface thereof.

11. That respondent's cream will remove all rough spots and blemishes from the skin.

12. That soap and water are injurious to the skin and that they dry the skin.

13. That respondent's cream supplies dry skin with what it needs to overcome and cure such condition.

14. That users of respondent's cream never suffer from rough skin and that it will banish roughness.

15. That respondent's cream refreshes tired cells and brings new life to the cells and to the skin.

16. That respondent's cream safeguards beauty glands and brings them back to activity.

17. That dry skin is an old skin.

18. That dry skin is the cause of wrinkles and that tiny lines become wrinkles.

19. That results are guaranteed.

20. That respondent's cream removes and corrects the cause of enlarged pores and blackheads.

21. That respondent's cream is a solvent of and dissolves the various forms of dirt and waste matter that soil the skin.

PAR. 6. Respondent's face cream does not penetrate the skin or penetrate to the bottom of the pores of the skin or into or below the skin. Respondent's cream does not have any unique or unusual or active penetrative properties in relation to the skin. Dirt from the outside does not get into or under the skin or become imbedded therein or fill the pores to the bottom, and respondent's said cream will not remove dirt if so located. Respondent's cream will not dissolve dirt or waste matter in the pores of the skin or cleanse the pores below the exterior openings of the pores. Respondent's said cream does not sink into the pores of the skin and then by reverse action or otherwise flush out the waste matter therein. Many skin cleaners, including respondent's said cream, clean the surface of the skin including the exterior openings of the pores and respondent's cream in its method of cleaning is no different in this general respect from such other skin preparations. Blackheads are not imbedded dirt, but are waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt. Respondent's cream will not overcome, correct, or cure a dry skin, but merely furnishes a temporary supply of lubrication. Respondent's said cream may be used on an oily skin and will clean an oily skin, at least to the same extent as a dry skin, but otherwise is not as efficacious on an oily skin as on a dry skin. The cause of an oily skin is not the same as the cause of a dry skin. Respondent's cream will not prevent or remove wrinkles or lines in the face except such lines as may be caused by dryness of skin. It will not remove blackheads as distinguished from removing superficial dirt from the outside surfaces thereof. Respondent's face cream will not refine the pores of the skin or correct or remove the cause of enlarged pores. It may, however, remove superficial accumulations of dirt from the pore openings, help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings. It will not remove from the skin blemishes or rough spots other than those due solely to dryness of the skin. Soap and water are not injurious to the skin and do not

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dry the skin except temporarily. Respondent's cream does not supply dry skin with what it needs to overcome or cure that condition. It is not true that all users of respondent's cream do not suffer from a rough skin or that said cream will banish roughness permanently, since any lubricating effect it may have is only temporary. Respondent's cream does not refresh tired cells or bring new life to the cells of the skin. Respondent's cream does not safeguard so-called beauty glands or bring them back to activity if in fact such glands exist. It is not true that a dry skin is an old skin and a dry skin is not the cause of all wrinkles, nor is it true that all tiny lines become wrinkles. Respondent does not, in fact, guarantee the results claimed for the use of its cream. Respondent's cream does not remove or correct the cause of enlarged pores and blackheads. Generally speaking, respondent's cream is not a solvent of, and does not, dissolve dust, soot, dirt, dead skin cells or the various forms of dirt and waste matter that soil the skin. Respondent's said cream will not affect the pores of the skin advantageously otherwise than as stated in this findings as to the facts.

PAR. 7. The principal effect of respondent's said cream is to cleanse the outer surface of the skin and the exterior openings of the pores. The respondent's cream does not penetrate the skin but may, to a limited extent, be temporarily absorbed by the skin and in this way may have a lubricating effect; such absorption, however, is not the equivalent of or synonymous with penetration. Such lubricating effect is of temporary duration determined by such factors as the length of time that the lubricating ingredients remain on the skin and by the amount of the absorption of such ingredients. This necessitates constant renewal of applications to the skin if such lubrication is to be maintained. Such treatment merely supplements the oil supplied by the skin itself, but the lubrication supplied by respondent's cream is not identical with the secretions of the skin. Respondent's cream does not stimulate the action of the oil glands in the skin and has no effect in correcting the cause of the deficiency in the secretion of the glands of the skin. Many unfavorable skin conditions are the result of internal conditions of the body, such as excesses or deficiency of dietary intake, unbalanced diet, too great or too little consumption of certain kinds of food, faulty or upset metabolism, nervous disorders, drug rashes, glandular disturbances or other conditions in regard to which respondent's face cream will have no appreciable effect upon the resulting skin conditions. Such skin conditions can be effectively treated only by removing the causes thereof, and respondent's cream has no effect on these causes. A dry skin, lines in the face and wrinkles may be due to causes such as advancing age,

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disease, worry, anxiety, overwork, conditions of the muscles and tissues, underlying the skin, and other causes upon which respondent's face cream will not have any effect. Respondent's cream is not a solvent of dust, soot, dirt, dead skin cells or of various kinds of organic and inorganic matter which can and do soil the skin of the face.

PAR. 8. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said face cream have had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations made by respondent as herein detailed, are true, and to induce them to purchase said face cream on account thereof. Thereby, trade has been unfairly diverted to respondent from competitors engaged in the sale, in commerce, between and among the various States of the United States and in the District of Columbia, of face creams, soaps, and cosmetics of various kinds. There are among the competitors of respondent those who in the sale of their preparations and products do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of said respondent's said practices, as herein set forth, substantial injury has been done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and of respondent's 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondent, Lady Esther, Ltd., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a cosmetic preparation now designated as "Lady Esther Face Cream" 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 advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or through implication:

1. That said Lady Esther Face Cream penetrates the skin or penetrates to the bottom of the pores of the skin or into or below the skin, or has any unique or unusual or active penetrative properties in relation to the skin.

2. That dirt from the outside gets into or under the skin or becomes imbedded therein or fills the pores of the skin to the bottom, or that respondent's cream will remove dirt if so located.

3. That said Lady Esther Face Cream will dissolve dirt or waste matter in the pores of the skin or cleanse them below their exterior openings.

4. That said cream sinks into the pores of the skin and then by reverse action or otherwise flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's said cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin and the exterior openings of the pores, whereas other skin preparations clean only the surface and the exterior openings of the pores.

6. That blackheads are imbedded dirt or are anything other than waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt.

7. That said cream will overcome, correct, or cure a dry skin or do more in affecting a dry skin than furnish a temporary supply of lubrication.

8. That said cream is as efficacious on an oily skin as on a dry skin except that it will clean an oily skin at least to the same extent as a dry skin.

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9. That the cause of an oily skin is the same as the cause of a dry skin.

10. That the use of said cream will prevent or remove wrinkles or lines in the face other than such lines as may be caused by dryness of the skin.

11. That the use of said cream will remove blackheads or any part or portion of blackheads except the superficial dirt on the outside surface thereof.

12. That the use of said cream will refine the pores of the skin or correct or remove the cause of enlarged pores or have any effect thereon except that its use may remove superficial accumulations of dirt from the pore openings and may help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings.

13. That the use of said cream will remove from the skin blemishes or rough spots other than those due solely to dryness of the skin.

14. That soap and water are injurious to the skin or that they dry the skin except temporarily.

15. That the use of said cream supplies dry skin with what it needs to overcome or cure that condition.

16. That all users of said cream are free from a rough skin or that the use of said cream will banish roughness permanently or have any lubricating effect on the skin more than a temporary lubricating effect.

17. That the use of said cream refreshes tired cells of the skin or brings new life to such cells.

18. That the use of said cream safeguards beauty glands or brings them back to activity.

19. That dry skin is an old skin.

20. That a dry skin is the cause of all wrinkles or that it is the cause of any wrinkles without specifying such wrinkles as the kind of wrinkles that are caused by a dry skin; or that all tiny lines become wrinkles, or that any tiny lines become wrinkles without accompanying said statement with a truthful explanation as to the kind or kinds of tiny lines which may or do become wrinkles.

21. That the respondent guarantees its said cream or the results claimed by the use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection and conjunction with such guarantee and with equal prominence and emphasis.

22. That the use of said cream removes or corrects the cause of enlarged pores or blackheads.

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23. That said cream is a solvent of or dissolves dust, soot, dirt, dead skin cells, or the various forms of dirt and waste matter that soil the skin.

24. That the use of said cream will affect the pores of the skin advantageously otherwise than as heretofore indicated in this order.

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