

Syllabus

IN THE MATTER OF

THE KENDALL COMPANY, DOING BUSINESS UNDER THE
TRADE NAME OF BAUER & BLACK

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

Docket 3894. Complaint, Sept. 16, 1939—Decision, June 19, 1940

Where a corporation engaged in manufacture of its Velure vanishing lotion or, as formerly designated, "Velure Lotion," and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution in commerce among the States and in said District of preparations designed and used for same general purpose, and including among such competitors many who sell and distribute hand lotion and other products designed, intended and sold to soften and beautify the skin and who do not in any way misrepresent quality or effectiveness of their respective products; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and through broadcasts from radio stations or extra-State audience and otherwise, and which were intended and likely to induce purchase of its said product—

- (a) Represented, directly and by implication, that its said preparation was a new and scientific discovery, which, applied to hands, acted more quickly in softening and beautifying skin than did various other hand lotions and other products sold by its competitors, in competition therewith, and that it was more economical and effective in use than competitive hand lotions; and
- (b) Represented that product in question conserved and supplemented the natural oils of the skin and that it had a bleaching and whitening effect thereon, and made hands shades lighter;

Facts being, none of the ingredients of which it consisted, essentially, had any substantial therapeutic value and all were commonly found in competitive hand lotions, it was not a new or scientific discovery, did not, applied to hands, act more quickly or achieve beneficial results more rapidly than other competitive products, and, although absorption of its glycerine and alcohol by skin might take place, it did not penetrate skin, and was not more economical or effective than competitive products, and would not accomplish results otherwise claimed therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of such statements and representations were true, and that said product possessed properties represented and would accomplish results claimed, and that, as direct consequence of such beliefs induced by its said statements and representations, number of purchasing public bought substantial volume of its said preparation, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of hand lotions and similar products designed, intended and sold for use in the softening and beautifying

Complaint

31 F. T. C.

of the skin, and who truthfully represented effectiveness and qualities of their respective products; to the injury of competition in commerce:

Held, That such acts and practices, under circumstances set forth, were all to prejudice and injury of public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Simon Michelet of Washington, D. C., 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 the Kendall Co., a corporation, hereinafter referred to as respondent, has 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. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having his office and principal place of business in the city of Boston, State of Massachusetts. Respondent also does business under the trade name Bauer & Black, having its office and principal place of business, doing business as Bauer & Black, at 2500 South Dearborn Street, city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation now designated "Velure Vanishing Lotion" and formerly designated "Velure Lotion."

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparation, when sold, to be transported from its factory in the State of Illinois, or from the State of origin of the shipment thereof, to purchasers of said preparation at their respective points of location in various States of the United States other than the State of origin of the shipment thereof, and in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in said preparation by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with persons, firms,

and partnerships also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of cosmetic preparations designed and used for the same general purposes as respondent's said preparation.

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 preparation, 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 preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly, or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Remarkable new hand lotion developed by scientists especially for women who do their own housework.

Makes hands feel naturally soft rather than artificially smooth.

It leaves no annoying stickiness or artificial coating when properly used.

Sinks right into the tiny crevices of the skin and disappears.

It has a sure, quick, self-penetrating action—sinks into skin crevices automatically.

You'll like the way Velure gets quick results. Like the way it requires no tedious rubbing. Like the way it vanishes—leaves no sticky or clammy after-feeling, and no gummy film to stain your gloves or your clothes, nor does it dull finger-nail polish.

Makes hands shades whiter, softer, smoother in a hurry.

A hand lotion specially created by scientists for women with active hands. "Red hands" become shades lighter.

This new Bauer & Black vanishing lotion goes to work faster.

And now Bauer & Black scientists bring you a new fast-acting lotion.

Works to help nature keep hands soft, smooth and lovely.

Velure helps nature maintain soft, smooth hands for you.

Complaint

31 F. T. C.

Velure is also amazingly economical. A concentrated lotion, it goes 2½ times as far as thick, old-fashioned lotions.

In addition, certain ingredients in Velure help to conserve natural, skin-softening oils.

Velure supplements the natural oils of the skin and helps the skin to become naturally smooth and supple.

That's right where Velure is different—for Velure is definitely non-alkaline—one of the few lotions that can make that claim.

A fast-acting vanishing lotion different from all thick, heavy gummy lotions.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in softening and beautifying the skin, the respondent has falsely represented, directly or by implication, among other things, (1) that said preparation is a new and scientific discovery which when applied to the hands, acts more quickly in softening and beautifying the skin than the various other hand lotions and other products which are sold by respondent's competitors in competition with said preparation, (2) that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin, (3) that said preparation conserves and supplements the natural oils of the skin, (4) that said preparation has a bleaching or whitening effect on the skin and makes hands shades lighter, and (5) that said preparation is more economical and effective in use than competitive hand lotions.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue, and constitute false advertisements. The true facts are that said preparation does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Said preparation consists essentially of alcohol with a trace of brucine, glycerine, mucilage, perfume, coloring matter, and water. None of these ingredients have any substantial therapeutic value, and all of them are commonly found in competitive hand lotions. Said preparation is not a new or scientific discovery. Said preparation, when applied to the hands, does not act more quickly or achieve beneficial results more rapidly than other competitive products. Said preparation does not penetrate the skin, although there may be some absorption of the glycerine and alcohol by the skin. The use of said preparation leaves an artificial coating or stickiness on the skin. Said preparation does not conserve or supplement the natural oils of the skin. Said preparation does not have any bleaching or whitening effect on the skin and does not make hands shades whiter or lighter. Said preparation is no more economical or effective in use than competitive hand lotions.

PAR. 7. There are among respondent's competitors many who sell and distribute hand lotions and other products designed, intended, and sold for the purpose of softening and beautifying the skin who do not in any way misrepresent the qualities or effectiveness of their respective products.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations had, and now has, the tendency and capacity to, and does, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and that said product possesses the properties represented and will accomplish the results claimed. As a direct consequence of the mistaken and erroneous beliefs induced by the statements and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said preparation, with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing hand lotions and similar products designed, intended and sold for use in the softening and beautifying of the skin, and who truthfully represent the effectiveness and qualities of their respective products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury 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 16th day of September, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondent, The Kendall Co., a corporation, doing business under the trade name of Bauer & Black, 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.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure

Findings

31 F. T. C.

and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this 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 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts having its office and principal place of business in the city of Boston, State of Massachusetts. Respondent also does business under the trade name of Bauer & Black, having its office and principal place of business, doing business as Bauer & Black, at 2500 South Dearborn Street, city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation now designated "Velure Vanishing Lotion" and formerly designated "Velure Lotion."

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparation, when sold, to be transported from its factory in the State of Illinois, or from the State of origin of the shipment thereof, to purchasers of said preparation at their respective points of location in various States of the United States other than the State of origin of the shipment thereof, and in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in said preparation by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with persons, firms, and partnerships also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of cosmetic preparations designed and used for the same general purposes as respondent's said preparation.

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 preparation, 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 preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Remarkable new hand lotion developed by scientists especially for women who do their own housework.

Makes hands feel naturally soft rather than artificially smooth.

It leaves no annoying stickiness or artificial coating when properly used.

Sinks right into the tiny crevices of the skin and disappears.

It has a sure, quick, self-penetrating action—sinks into skin crevices automatically.

You'll like the way Velure gets quick results. Like the way it requires no tedious rubbing. Like the way it vanishes—leaves no sticky or clammy after-feeling, and no gummy film to stain your gloves or your clothes, nor does it dull fingernail polish.

Makes hands shades whiter, softer, smoother in a hurry.

A hand lotion specially created by scientists for women with active hands.

"Red hands" become shades lighter.

This new Bauer & Black vanishing lotion goes to work faster.

And now Bauer & Black scientists bring you a new fast-acting lotion.

Works to help nature keep hands soft, smooth and lovely.

Velure helps nature maintain soft, smooth hands for you.

Velure is also amazingly economical. A concentrated lotion, it goes 2½ times as far as thick, old-fashioned lotions.

In addition, certain ingredients in Velure help to conserve natural, skin-softening oils.

Velure supplements the natural oils of the skin and helps the skin to become naturally smooth and supple.

That's right where Velure is different—for Velure is definitely non-alkaline—one of the few lotions that can make that claim.

A fast-acting vanishing lotion different from all thick, heavy gummy lotions.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set

out, all of which purport to be descriptive of respondent's preparation and its effectiveness in softening and beautifying the skin, the respondent, has falsely represented, directly or by implication, among other things, (1) that said preparation is a new and scientific discovery which when applied to the hands, acts more quickly in softening and beautifying the skin than the various other hand lotions and other products which are sold by respondent's competitors in competition with said preparation, (2) that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin, (3) that said preparation conserves and supplements the natural oils of the skin, (4) that said preparation has a bleaching or whitening effect on the skin and makes hands shades lighter, and (5) that said preparation is more economical and effective in use than competitive hand lotions.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The true facts are that said preparation does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Said preparation consists essentially of alcohol with a trace of brucine, glycerine, mucilage, perfume, coloring matter, and water. None of these ingredients have any substantial therapeutic value, and all of them are commonly found in competitive hand lotions. Said preparation is not a new or scientific discovery. Said preparation, when applied to the hands, does not act more quickly or achieve beneficial results more rapidly than other competitive products. Said preparation does not penetrate the skin, although there may be some absorption of the glycerine and alcohol by the skin. The use of said preparation leaves an artificial coating or stickiness on the skin. Said preparation does not conserve or supplement the natural oils of the skin. Said preparation does not have any bleaching or whitening effect on the skin and does not make hands shades whiter or lighter. Said preparation is no more economical or effective in use than competitive hand lotions.

PAR. 7. There are among respondent's competitors many who sell and distribute hand lotions and other products designed, intended and sold for the purpose of softening and beautifying the skin who do not in any way misrepresent the qualities or effectiveness of their respective products.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations had, and now has, the tendency and capacity to, and does, and did, mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and that said product possesses the properties represented and will accomplish the results claimed. As a direct consequence of the mistaken and erroneous beliefs induced by the statements and representations of the respondents, as hereinabove detailed, a number of the purchasing public have purchased a substantial volume of respondent's said preparation, with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing hand lotions and similar products designed, intended and sold for use in the softening and beautifying of the skin, and who truthfully represent the effectiveness and qualities of their respective products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found have been, and are, all to the prejudice and injury 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Kendall Co., a corporation, doing business under the trade name of Bauer & Black, or doing business under any other trade name or names, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its cosmetic preparation designated "Velure Vanishing Lotion," formerly designated "Velure Lotion," or any other cosmetic preparation composed of substantially similar ingredients or possess-

Order

31 F. T. C.

ing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a new or scientific discovery; that said preparation, when applied to the hands, acts more quickly in softening and beautifying the skin or achieves beneficial results more rapidly than other competitive products; that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin; that said preparation conserves or supplements the natural oils of the skin; that said preparation has a bleaching or whitening effect on the skin, or makes hands shades whiter or lighter; that said preparation is more economical or effective in use than competitive hand lotions.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

Syllabus

IN THE MATTER OF
HENRY BERGMANCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4026. Complaint, Feb. 8, 1940—Decision, June 19, 1940*

Where an individual engaged in sale and distribution to purchasers in various States and in the District of Columbia, of instruments for locating gold and silver, of booklet designated "Jacob's Rod," of so-called "crystal balls" for use, allegedly, in telling fortunes, of metal disks designated by him "Universal Good Luck Coins," and of list of names and addresses of parties or concerns from whom or which devices used in searching for treasures or minerals could be obtained; in advertisements of his said products in circulars, pamphlets, newspapers, and magazines distributed and circulated among prospective purchasers throughout the United States—

- (a) Represented and implied to purchasing public through statements made, as aforesaid, that his instrument for locating gold and silver would enable person using same to locate said metals and hidden treasures, and that various testimonials published and disseminated by him in said advertisements in said connection were true and that persons giving same had actually located said metals or hidden treasures through use of his instrument, and, further, that through use of his said list of names and addresses of concerns selling devices used in searching for treasures or minerals a person would be able to pick particular device suitable for such person's needs, and that information contained in said booklet was valuable to anyone interested in locating lost, buried or hidden treasure, gold, silver, lead, or other ores;
- (b) Represented, as aforesaid, that his said booklet entitled "Jacob's Rod" imparted information which would enable person to ascertain his psychic powers, make his own goldometer and locate gold, silver, and hidden treasure, and that such booklet was rare and that directions given therein were practiced by Jacob of old, and many other ancient patriarchs, and that it was offered by him at a very special price of \$1; and
- (c) Represented, as aforesaid, that his so-called fortune telling crystal ball foretold future and answered all questions concerning a person's past, present, and future, and that his "Universal Good Luck Coins" possessed mysterious powers and would bring good luck to those carrying one;

Facts being various testimonials published and disseminated by him, as aforesaid, were not from people who had located gold, silver, or hidden treasure with his instrument, booklet "Jacob's Rod" was not rare and there was no basis in fact for statement that directions given therein were practiced by Jacob of old or any other ancient patriarch's, price thereof of \$1 was not a special one, but regular price at which he sold it, and supply thereof was not limited, and list of names and addresses sold by him, as aforesaid, was worthless, none of the devices thus procurable being suitable or effective for purpose represented, or accomplishing any results claimed therefor and his statements and representations in other respects, as above set forth, were false, misleading, and deceptive;