

Syllabus

IN THE MATTER OF
BETTY WELLS FOWLER, TRADING AS BETTY WELLS
COSMETIC COMPANY

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

Docket 3538. Complaint, Aug. 17, 1938—Decision, June 29, 1940

Where an individual engaged in compounding, under name "Tissuefane," cosmetic preparation consisting essentially of water, alcohol, gum, perfume, small amount of benzoate of soda, and coal-tar dye, and in compounding, under name "Tissuefane Preparatory Oil," preparation consisting essentially of a pure scented olive oil, and in sale and distribution of said preparations to purchasers in various other States, in substantial competition with others also engaged in sale and distribution of similar products designed and intended for similar usage, in commerce also among the various States and in the District of Columbia; in advertising her said products in newspapers and other publications, pamphlets, magazines, etc., having general circulation and reaching members of purchasing public in various States—

- (a) Represented that said "Tissuefane" would nourish skin and build tissue and strengthen facial muscles and remove lines, pimples, or crow's-feet and blackheads, facts being it would have no effect on blackheads in excess of removing superficial dirt on surface thereof, and it would not, by its effect upon circulation of blood supply or otherwise, render firmer or strengthen or nourish skin, muscles, or tissues, or build tissue, and would not accomplish, otherwise, results claimed therefor as above set forth;
- (b) Represented that said preparation would rejuvenate, preserve, and stimulate or beautify skin, and reduce and clean pores, and increase circulation and supply of blood, facts being effect upon circulation of blood at place of application was transitory and had no physiological significance, it would not beautify, revitalize, or rejuvenate user or her skin, and neither stimulated pores nor reduced their size nor cleansed same, in excess of removing superficial dirt from openings thereof;
- (c) Represented that said product was made wholly of fruit and vegetable products and was an innovation in the cosmetic field and constituted a bleaching agent and skin tonic and was healing to skin and possessed beneficial value in treatment of acne, facts being it was not composed entirely as aforesaid set out, did not constitute an unparalleled innovation in cosmetic world, had no bleaching qualities, was not a skin tonic in any sense that permanent beneficial results may be obtained from its persistent use, and was not healing nor helpful nor beneficial in treatment of acne, and would not erase years from appearance of user; and
- (d) Represented that her said "Tissuefane Preparatory Oil" would nourish or feed skin and pores and make skin soft and prevent or remove wrinkles or lines from face, facts being it did not remove wrinkles or lines other than that very fine lines due solely to dryness of skin might be temporarily removed by its use, any softness which it might impart to skin was temporary only, and it would not nourish or feed same or tissues;

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With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations, as above set forth were true, and that her said preparations would accomplish results indicated, and to erase substantial portion of such public, because of said erroneous and mistaken belief, to purchase substantial quantities of her said products, and with result that trade was diverted unfairly to her from competitors in commerce who truthfully advertise effectiveness in use of their respective preparations:

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. John J. Keenan*, trial examiner.

Mr. Randolph W. Branch and *Mr. DeWitt T. Puckett* for the Commission.

Betty Wells Fowler, pro se.

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 Betty Wells Fowler, an individual, trading and doing business under the name and style of Betty Wells Cosmetic Co., 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, Betty Wells Fowler, is an individual, trading and doing business under the name and style of Betty Wells Cosmetic Co., with her office and principal place of business located in the town of Capitola, county of Santa Cruz, State of California.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of distributing and selling certain cosmetics known as "Tissuefane" and "Tissuefane Preparatory Oil."

Respondent causes the said cosmetics when sold to be transported from her place of business in the State of California to purchasers thereof located in States of the United States other than the State of California.

PAR. 3. In the course and conduct of her said business respondent is now, and has been for more than 1 year last past, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of her said business, and for the purpose of inducing the purchase of the said cosmetics, respondent has made and caused to be made, by means of radio broadcasts, advertising circulars and folders, and advertisements inserted in newspapers circulated generally throughout the United States representations concerning the character and nature of said cosmetics and their effectiveness in use. Typical of the said representations so made as to "Tissuefane" are the following:

Tissuefane firms and strengthens the skin through the process of arousing the circulation. It definitely removes lines and crowsfeet, eliminates large pores, and has a tendency to bleach.

Its action is triplefold—stimulating, beautifying, and permanently rejuvenating.

Permanent scientific benefit derived from its persistent use.

Find your face simply wiped clean of weariness—drooping tired lines—and instead of looking even your years, you will find a young glowing countenance confronting you.

A real beneficial bracing skin tonic.

I would say it was *bad* for pimples.

It is made entirely of fruit and vegetable products carefully blended and was perfected nearly twenty years ago by a well-known chemist.

Tissuefane is an unparalleled innovation in the cosmetic world. It protects beauty, builds youthful tissue and contour, banishes aging lines, and strengthens facial muscles. If used absolutely as directed, it will work miracles in your appearance.

It helps remove tired lines and weary looks.

Tissuefane is the result of years of scientific research.

The use of Tissuefane is triple fold: first—its principal work is to increase the blood supply so necessary for preservation of fresh, healthy skins; second—it stimulates and refines the pores, definitely removes blackheads, and also gently bleaches unsightly spots, such as freckles, and lastly, is a marvelous help for one of the worst destroyers of feminine beauty, sagging cheek muscles and flabby chins.

Enforced circulation firms those tired or lazy muscles.

Tissuefane treatment has an effect equal to several hours rest and brings a blood supply immediately to the surface of the skin equal to the ordinary supply of several days—actually feeding the skin in a highly scientific way. In addition to being an aid to beauty it is very healing to a skin irritated by roughness or pimples—even in aggravated cases of acne great benefit is obtained, owing to the thorough manner in which it speeds up blood circulation.

The re-vitalizing, rejuvenating and scientific action of Tissuefane.

You will find crowsfeet disappearing with this renewed circulation.

Tissuefane will bring both positive results and lasting satisfaction, whether it be used to retain your fresh glowing beauty, or to bring back the charm of a beautiful, soft, attractive skin.

Tissuefane is always at hand as the magic helper to "pick you up"—mentally, as well as physically, no matter how tired you feel or how weary looking you become.

Erases years from your appearance.

Typical of the said representations so made as to "Tissuefane Preparatory Oil" are the following:

Too much cannot be said for this delightful soothing, nourishing vegetable oil. The pores drink it in like thirsty plants do the gentle raindrops.

A treatment that erases years from your appearance. For dry skins, particularly, a carefully blended Vegetable Oil lubricates and softens the texture of your skin until it becomes petal-soft.

Aside from feeding the pores and keeping the skin soft and pliable during the Tissuefane treatment, it is of inestimable value in eradicating the fine lines which form around the eyes.

This delicately fragrant, carefully blended Vegetable Oil triply refined is absorbed almost immediately as you will discover and the most persistent little skin creases, for that is what wrinkles really are, simply smooth away.

For those whose skins have a rather undernourished appearance this delightful Oil is like food.

All of said statements, together with similar statements made in the respondent's radio broadcasts and advertising literature, purport to be descriptive of respondent's products and their effectiveness in use. By said statements respondent directly or impliedly represents that "Tissuefane Preparatory Oil": softens, nourishes, and lubricates the skin; is absorbed by and feeds the pores of the skin; eradicates fine lines from around the eyes and smooths away wrinkles, and erases years from the appearance. Respondent in like manner represents that "Tissuefane": is composed entirely of fruit and vegetable products; is an unparalleled and scientific innovation in the cosmetic world; arouses and enforces the circulation and increases the blood supply to the portions of the body where it is applied; strengthens the facial muscles, helps sagging cheek muscles and flabby chins, builds youthful tissue and contour, and removes lines of age and weariness, blackheads, pimples and crow's-feet from the face; firms, stimulates, refines, and preserves the skin; is healing to the skin and beneficial to acne; stimulates, cleans, and reduces the pores; is a gentle bleaching agent, and is beautifying, rejuvenating, and revitalizing to the skin; erases years from the appearance of the user, and will produce a glowing, youthful complexion; produces positive results and scientific and permanent benefits.

PAR. 5. The representations made by the respondent with respect to the nature and effect of her products, when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, "Tissuefane Preparatory Oil" does not nourish, soften, or lubricate the skin. It is neither absorbed by nor feeds the pores. Said preparation neither eradicates fine lines from around the eyes nor smooths away wrinkles, nor erases years from the appearance. "Tissuefane"

is not composed entirely of fruit and vegetable products. It is not an unparalleled nor scientific innovation in the cosmetic world. It has no effect on the circulation of the blood, the muscles of the face or cheek, or flabby chins. It does not build tissue or contour, youthful or otherwise, nor remove lines due to age or fatigue, blackheads, pimples, or crow's-feet. It does not firm, stimulate, refine, or preserve the skin. It neither stimulates, cleans, nor reduces the pores; it is not healing to the skin nor beneficial to acne. It is not a bleaching agent. It gives no permanent or scientific stimulation, protection, beautification, rejuvenation, revitalization, or improvement to the skin or complexion.

The true facts are that respondent's cosmetics are of value only in that they provide a pleasant lubricant for massaging the face, which massage may be directly beneficial to the skin, have a cooling and mildly astringent effect, leave a slight oily residue somewhat comforting to a dry skin, and give to the skin a transitory feeling of smoothness and improvement.

PAR. 6. There are, among respondent's aforesaid competitors, many who manufacture, distribute, and sell cosmetics who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in the description of her products and their effectiveness when used, as hereinabove set out, were and are calculated to have, have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling cosmetics, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 8. 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 August 17, 1938, issued and subsequently served its complaint in this proceeding upon the said respondent, Betty Wells Fowler, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 6th day of September 1938, the respondent filed her answer in this proceeding. Thereafter, testimony and other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Betty Wells Fowler, pro se, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Betty Wells Fowler, is an individual trading under the name and style of Betty Wells Cosmetic Co., with her office and principal place of business located at Capitola, Sante Cruz County, Calif. Respondent was for more than 1 year prior to the issuance of the complaint herein, engaged in the business of compounding, distributing, and selling cosmetic preparations known and designated as "Tissuefane" and "Tissuefane Preparatory Oil."

"Tissuefane" consists essentially of water, alcohol, gum, perfume, a small amount of benzoate of soda, and a coal-tar dye. "Tissuefane Preparatory Oil" is a pure scented olive oil.

PAR. 2. In the course and conduct of her business as aforesaid, respondent caused said products, when sold, to be transported from her place of business in California to purchasers thereof located at various points in States of the United States other than the State from which the said shipments were made. Respondent maintained a course of trade in said products in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, respondent has been in substantial competition with other individuals and with corporations and firms also engaged in the business of selling and distributing similar preparations, or other preparations or products designed

and intended for similar usage, in commerce among and between various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of her business, and for the purpose of inducing the purchase of her said products, respondent caused various statements and representations relative to said products to be inserted in advertisements in newspapers and in other publications, pamphlets, magazines, etc., having a general circulation which reached members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

Tissuefane firms and strengthens the skin through the process of arousing the circulation. It definitely removes lines and crowsfeet, eliminates large pores, and has a tendency to bleach.

Its action is triplefold—stimulating, beautifying, and permanently rejuvenating.

Permanent scientific benefit derived from its persistent use.

Find your face simply wiped clean of weariness—drooping tired lines—and instead of looking even your years, you will find a young glowing countenance confronting you.

A real beneficial bracing skin tonic.

I would say it was *bad* for pimples.

It is made entirely of fruit and vegetable products carefully blended and was perfected nearly twenty years ago by a well-known chemist.

Tissuefane is an unparalleled innovation in the cosmetic world. It protects beauty, builds youthful tissue and contour, banishes aging lines, and strengthens facial muscles. If used absolutely as directed, it will work miracles in your appearance.

It helps remove tired lines and weary looks.

Tissuefane is the result of years of scientific research.

The use of Tissuefane is triple fold: first—its principal work is to increase the blood supply so necessary for preservation of fresh, healthy skins; second—it stimulates and refines the pores, definitely removes blackheads, and also gently bleaches unsightly spots, such as freckles, and lastly, is a marvelous help for one of the worst destroyers of feminine beauty, sagging cheek muscles and flabby chins.

Enforced circulation firms those tired or lazy muscles.

Tissuefane treatment has an effect equal to several hours rest and brings a blood supply immediately to the surface of the skin equal to the ordinary supply of several days—actually feeding the skin in a highly scientific way. In addition to being an aid to beauty it is very healing to a skin irritated by roughness or pimples—even in aggravated cases of acne great benefit is obtained, owing to the thorough manner in which it speeds up blood circulation.

The re-vitalizing, rejuvenating and scientific action of Tissuefane.

You will find crowsfeet disappearing with this renewed circulation.

Tissuefane will bring both positive results and lasting satisfaction, whether it be used to retain your fresh glowing beauty, or to bring back the charm of a beautiful, soft, attractive skin.

Tissuefane is always at hand as the magic helper to “pick you up” mentally, as well as physically, no matter how tired you feel or how weary looking you become.

Erases years from your appearance.

Typical of the said representations so made as to "Tissuefane Preparatory Oil" are the following:

Too much cannot be said for this delightful soothing, nourishing vegetable oil. The pores drink it in like thirsty plants do the gentle raindrops.

A treatment that erases years from your appearance. For dry skins, particularly, a carefully blended Vegetable Oil lubricates and softens the texture of your skin until it becomes petal-soft.

Aside from feeding the pores and keeping the skin soft and pliable during the Tissuefane treatment, it is of inestimable value in eradicating the fine lines which form around the eyes.

This delicately fragrant, carefully blended Vegetable Oil triply refined is absorbed almost immediately as you will discover and the most persistent little skin creases, for that is what wrinkles really are, simply smooth away.

For those whose skins have a rather under-nourished appearance this delightful Oil is like food.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, respondent has represented, directly or by implication, that: "Tissuefane Preparatory Oil" softens, nourishes, and lubricates the skin; is absorbed by and feeds the pores of the skin; eradicates fine lines from around the eyes and smooths away wrinkles, and erases years from the appearance of the user; that "Tissuefane" is composed entirely of fruit and vegetable products; is an unparalleled and scientific innovation in the cosmetic world; arouses and enforces the circulation and increases the blood supply to the portions of the body where it is applied; strengthens the facial muscles, helps sagging cheek muscles and flabby chins; builds youthful tissue and contour; removes lines of age and weariness, blackheads, pimples, and crow's-feet from the face; firms, stimulates, refines, and preserves the skin; is healing to the skin and beneficial to acne; stimulates, cleans, and reduces the pores; is a gentle bleaching agent, and is beautifying, rejuvenating, and revitalizing to the skin, erases years from the appearance of the user; will produce a glowing youthful complexion; produces positive results and scientific and permanent benefits.

PAR. 5. The aforesaid statements and representations by the respondent with respect to the therapeutic and other properties of her said products and the results obtained from the use thereof are exaggerated, false, and misleading. In truth and in fact respondent's preparation "Tissuefane" is not composed entirely of fruit and vegetable products nor is it an unparalleled innovation in the cosmetic world. Its effect upon the circulation of the blood at the place of application is transitory and has no physiological significance. Neither by its effect upon the circulation of the blood supply or otherwise will it render firmer or strengthen or nourish the skin, muscles, or tissues, nor will it build tissue. It will not beautify, revitalize, or rejuvenate

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the user or her skin. No scientific or permanent benefit will result from its use. It will not remove lines, blackheads, pimples, or crow's-feet from the face and any "glow" which it may impart due to its irritant character is of short duration. It is not a skin tonic in any sense that permanent beneficial results will be obtained from its persistent use. It is not healing nor is it helpful or beneficial in the treatment of acne. It neither stimulates the pores nor reduces their size. It has no bleaching qualities. It will not erase years from the appearance of the user.

Respondent's product "Tissuefane Preparatory Oil" will not nourish or feed the skin or tissues. It does not remove wrinkles or lines except that very fine lines due solely to dryness of the skin may be temporarily removed by its use. Any softness which it may impart to the skin is but temporary.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid, with respect to the said preparations, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and that respondent's said preparations 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 respondent's said preparations. As a result, trade has been diverted unfairly to the respondent from her competitors in commerce among and between the various States of the United States who truthfully advertise the effectiveness in use of their respective preparations.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed herein in support of the complaint (respondent not having filed brief and oral argument not having been requested)

and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Betty Wells Fowler, individually and trading under the name of Betty Wells Cosmetic Co., or under any other name or names, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cosmetic preparations heretofore designated by the names of "Tissuefane" and "Tissuefane Preparatory Oil," or any other preparations composed of substantially similar ingredients or possessing substantially similar qualities, whether sold under those names or any other names, do forthwith cease and desist from representing:

(a) That the preparation designated "Tissuefane"

(1) Will nourish the skin, build tissue or strengthen facial muscles;

(2) Will remove blackheads or have any effect thereon in excess of removing the superficial dirt on the surface thereof;

(3) Will remove lines, pimples or crow's-feet;

(4) Will rejuvenate, preserve, stimulate, or beautify the skin except to the extent that said preparation may temporarily stimulate the skin;

(5) Will reduce the pores or will clean the pores in excess of removing superficial dirt from the pore openings;

(6) Will increase the circulation and supply of blood or have any effect thereon in excess of slightly and temporarily stimulating the blood in those portions of the body to which it is applied;

(7) Is made wholly of fruit and vegetable products or is an innovation in the cosmetics field;

(8) Is a bleaching agent;

(9) Is a skin tonic, or is healing to the skin or possesses any beneficial value in the treatment of acne.

(b) That the preparation designated "Tissuefane Preparatory Oil"

(10) Will nourish or feed the skin or pores;

(11) Will make the skin soft other than temporarily;

(12) Will prevent or remove wrinkles or lines from the face other than such lines as may be caused solely by dryness of the skin.

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

Complaint

IN THE MATTER OF

DAN M. THOMPSON, DOING BUSINESS AS DANSON
LABORATORIES AND THOMPSON LABORATORIES

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

Docket 3752. Complaint, Mar. 31, 1939—Decision, June 29, 1940

Where an individual engaged in sale and distribution of his Danson Formula medicinal preparation, advertised and sold as cure for alcoholism or drunkenness, to purchasers in 10 or 12 States other than State of Illinois, or place of business, and including Minnesota, Missouri, and Ohio, in which he circulated his advertising and labels as below set forth—

(a) Represented through advertisements in various newspapers and other publications, and through circulars sent through the mails and circular letters, that his said Danson Formula constituted a remedy or cure for alcoholism and that it was a competent and effective treatment for said condition or drunkenness, and counteracted desire for alcoholic stimulation and relieved craving therefor;

Facts being his said product, active drug ingredient of which was a sedative, was not a remedy or cure for either acute or chronic alcoholism, requiring separate treatments and also, in some cases, different treatments in cases of same type, and it would not relieve craving for such stimulation or counteract desire therefor, or have any value as a competent or effective treatment for alcoholism in excess of its value as a sedative for quieting nerves; and

(b) Represented through use of word "Laboratories," as included by him in his trade names and displayed on labels attached to his product, that he conducted a laboratory in connection with his said business;

Facts being he did not own or operate a laboratory or use any laboratory equipment in connection with the business in question;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true, and into purchase of substantial quantity of said product;

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.

Before *Mr. John J. Keenan* and *Mr. Lewis C. Russell*, trial examiners.
Mr. DeWitt T. Puckett for the Commission.

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 Dan M. Thompson, an individual doing business as Danson Laboratories and Thompson Laboratories, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a