

Complaint

IN THE MATTER OF

MOREHOUSE MANUFACTURING COMPANY, TRADING AS
THE SHAVING POWDER COMPANY

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

Docket 3721. Complaint, Feb. 23, 1939—Decision, Dec. 11, 1940

Where a corporation engaged in manufacture of its "Magic Shaving Powder" for hair removal and in interstate sale thereof; in advertisements of its said product which it disseminated and caused to be disseminated through insertion in newspapers having general circulation among the colored race and distributed in commerce among the various States, and through other means in commerce, and otherwise, and which were intended and likely to induce purchase of its said product—

- (a) Represented directly and by inference that said "Magic Shaving Powder" was a new method of removing hair and that a person could shave without a razor and that its use was harmless;

Facts being said product was a depilatory which accomplished results by dissolving hair rather than by cutting as in shaving, and was not a new method for removing hair and was not harmless in all cases, but, by virtue of presence therein, as solvents and active ingredients, of barium sulphide and calcium hydroxide might, under customary and usual conditions, be harmful to skin and underlying structures of people having tender skin, and, more particularly, those of the white race, and in such cases result in temporary rash or dermatitis, and also, by reason of presence of said ingredients, might result in injury to eyes of the careless user; and

- (b) Failed to include in its said advertisements cautionary statements to the effect that said powder should not be used by those having tender skin and should not be allowed to get into eyes of user thereof;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true and that its said product was a new method of removing hair and was not a depilatory, and that its use was unqualifiedly harmless and of causing portions of said public because of such belief, thus engendered, to purchase its said preparation:

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 W. Addison*, trial examiner.

Mr. Reuben J. Martin and *Mr. Morton Nesmith* for the Commission.
Adams, Douglas & Brennan, of Savannah, Ga., 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

Complaint

32 F. T. C.

Trade Commission having reason to believe that the Morehouse Manufacturing Co., a corporation, trading under the name of Shaving Powder Co., hereinafter referred to as the 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, Morehouse Manufacturing Co., is a corporation created and existing under and by virtue of the laws of the State of Georgia with its principal office and place of business located in the city of Savannah within the said State of Georgia.

PAR. 2. Said respondent, trading under the name of Shaving Powder Co., is now, and for more than 5 years last past has been, engaged in the manufacture, distribution, and sale of a preparation for use in removing hair under the trade name "Magic Shaving Powder." Said respondent causes said preparation, when sold by it, to be transported from its place of business in Savannah, Ga., to the purchasers thereof located in various States of the United States other than the State of Georgia and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation 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 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 insertion in newspapers having a general circulation, all of which are distributed in commerce among and between the various States of the United States, 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:

Magic Shaving Powder. Shave without a razor.

Magic Shaving Powder. No more trouble.

At last science has found a way to remove a beard without shaving.

Merely apply Magic Shaving Powder as directed then wipe off leaving a clear smooth skin.

Have a clean shave without using a razor. Simply wipe your beard off.

All of said statements together with other statements of similar import and meaning appearing in respondent's advertising literature, purport to be descriptive of respondent's preparation and of its effectiveness in use. In all of its advertising literature, respondent, directly and by inference, through the statements and representations herein set out, and through other statements and representations of like or similar import and effect, represents that the preparation, "Magic Shaving Powder," is, in fact, a shaving powder; that it is a new method of removing hair, and that its use is harmless and will leave the user with a clear, smooth skin.

PAR. 4. The representations made by the respondent and the implications therefrom as to the nature and effectiveness of its said preparation are false or grossly exaggerated, and greatly exceed those which might truthfully be made for said preparation. In truth and in fact, Magic Shaving Powder is not a shaving powder; it is not a new method for removing hair; and Magic Shaving Powder is not harmless in all cases and its use will not leave the user with a clear, smooth skin.

In truth and in fact, the use of Magic Shaving Powder may, under customary and usual conditions, be harmful to the skin and the underlying structures of the user thereof because of the ingredients from which said preparation is compounded, and its use may also result in severe injury to the eyes, of the user thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation, Magic Shaving Powder, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation, Magic Shaving Powder, is in fact a shaving powder, is a new method of removing hair and that its use is harmless and will leave the user with a clear, smooth skin, and causes a portion of the purchasing public because of said erroneous and mistaken belief so engendered to purchase respondent's said preparation. As a result thereof injury has been and is now being done by respondent to a substantial portion of the purchasing public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute 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 23d day of February 1939, issued and subsequently served its complaint in this proceeding upon said respondent, Morehouse Manufacturing Co., trading as The Shaving Powder Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 14, 1939, the 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's counsel, W. W. Douglas, 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 filing of a report upon the evidence by the trial examiner, the presentation of argument 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 now being 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

PARAGRAPH 1. Respondent, Morehouse Manufacturing Co. is a corporation created and existing under and by virtue of the laws of the State of Georgia with its principal office and place of business located in the city of Savannah within the said State of Georgia.

PAR 2. Said respondent, trading under the name of The Shaving Powder Co., is now, and for more than 5 years last past (respondent states for more than 39 years) has been, engaged in the manufacture, distribution, and sale of a preparation for use in removing hair

under the trade name "Magic Shaving Powder." Said respondent causes said preparation when sold by it to be transported from its place of business in Savannah, Ga., to the purchasers thereof located in various States of the United States other than the State of Georgia and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation 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 aforesaid business the respondent has disseminated and has caused the dissemination of advertisements concerning its said preparation by insertion in newspapers having a general circulation among the colored race all of which are distributed in commerce among and between the various States of the United States and by other means in commerce as commerce is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly the purchase of its said preparation; and has disseminated and has caused the dissemination of advertisements concerning its preparation by various means for the purpose of inducing or which were 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following, which are true excerpts from said advertisements:

Magic Shaving Powder. Shave without a razor.

Magic Shaving Powder. No more trouble.

At last science has found a way to remove a beard without shaving.

Merely apply Magic Shaving Powder as directed, then wipe off leaving a clear, smooth skin.

Have a clean shave without using a razor. Simply wipe your beard off.

All of said statements together with other statements of similar import and meaning appearing in respondent's advertising literature, purport to be descriptive of respondent's preparation and of its effectiveness in use. In all of its advertising literature respondent directly or by inference through the statements and representations herein set out and through other statements and representations of like or similar import and effect represents that the preparation "Magic Shaving Powder" is a new method of removing hair, that a person can shave without a razor and that its use is harmless.

PAR. 4. The representations made by respondent and the implications therefrom as to the nature and effectiveness of its said preparation are deceptive and exaggerated and greatly exceed those which

Order

32 F. T. C.

might truthfully be made for said preparation in that Magic Shaving Powder is a depilatory which accomplishes results by dissolving hair rather than by cutting as in shaving and is not a new method for removing hair and Magic Shaving Powder is not harmless in all cases as hereinafter specified.

Two of the active ingredients of Magic Shaving Powder are barium sulphide and calcium hydroxide which ingredients are capable of dissolving horny substances such as hair and the use of Magic Shaving Powder may under customary and usual conditions be harmful to the skin and the underlying structures thereof of people who have tender skin and more particularly those of the white race, in that the use of the preparation by people with tender skins and more particularly those of the white race may result in a temporary rash or dermatitis. Also because of the ingredients barium sulphide and calcium hydroxide its use may result in injury to the eyes of the careless user.

PAR. 5. Respondent has discontinued all newspaper, periodical and direct-letter advertising since February 24, 1939.

PAR. 6. The use by the respondent of the foregoing, deceptive and exaggerated statements, representations, and advertisements disseminated as aforesaid with respect to said preparation, Magic Shaving Powder, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and that respondent's said preparation is a new method of removing hair, is not a depilatory, and that its use is unqualifiedly harmless, and has caused a portion of the purchasing public, because of said erroneous and mistaken belief so engendered to purchase respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and constitute 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 fur-

ther 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.

It is ordered, That the respondent, Morehouse Manufacturing Co., a corporation, trading as The Shaving Powder Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of Magic Shaving Powder, or any product of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly—

1. Disseminating or causing to be disseminated any advertisements (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 Magic Shaving Powder is a new method for removing hair or that the method prescribed for the use of Magic Shaving Powder constitutes shaving, or which advertisements fail to contain cautionary statements to the effect that Magic Shaving Powder should not be used by those having a tender skin and should not be allowed to get into the eyes of the user thereof.

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 Magic Shaving Powder, which advertisements contain any of the representations prohibited in paragraph 1 hereof, or which fail to contain cautionary statements to the effect that Magic Shaving Powder should not be used by those having a tender skin, and should not be allowed to get into the eyes of the user thereof.

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.

IN THE MATTER OF
UNION STARCH & REFINING COMPANY, AND UNION
SALES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3804. Complaint, June 1, 1939—Decision, Dec. 11, 1940

Where a corporation and its wholly owned sales subsidiary, respectively engaged in manufacture, and in sale and distribution, of glucose or corn sirup unmixed, to, mostly, manufacturers in other States of candy, who were competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers, in the various States and in the District of Columbia, of said product, in (1) most kinds of which such sirup is used as an ingredient to some extent, and in production of many varieties of which it is one of major raw materials, with cost thereof to candy manufacturer purchasers constituting a substantial part of cost of raw material used in particular candies having relatively high sirup content and of total cost of manufacturing extensive line of candies having wide range of sirup contents, and with costs of such purchasers, thus unfavored, increasing over such costs of favored purchasers directly as amount of discrimination between them increased and as sirup content of candy increased, and in (2) many of which candies containing substantial quantity of such sirup and priced at but few cents per pound, and bearing no differentiating name or brand, sellers attracted customers by selling at only a small fraction of a cent per pound lower than a competitor, and especially so in case of sale of such candies to chain stores and other purchasers of large quantities, to whom such small difference in price was determinative in placing their business, so that, under circumstances aforesaid, unfavored purchaser's higher raw material costs were difficult, if not impossible, to recover by increasing price of candy manufactured if such unfavored purchaser hoped to maintain volume sales—

- (a) Sold and delivered their said sirup in several types and sizes of containers at prices per hundredweight, which increased over tank car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to \$1.08 for five gallon kegs, and from 13 cents to 33 cents for returnable drums, depending on presence or absence of return freight thereon and amount thereof; and
- (b) Sold their said sirup, between June 19, 1936, and July 23, 1937, at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Danville, North Chicago, Dixon, and Zion, Ill., and Milwaukee, Wis., than those at which they sold their said sirup in containers of like size and type to purchasers located in cities aforesaid, and thereafter sold their said sirup to purchasers in all cities other than Chicago at higher prices per hundredweight than those at which they sold said product in containers of like size and type to purchasers located in city aforesaid, and at prices which were not uniformly higher, but varied with geographical