

IN THE MATTER OF

A. SARTORIUS & COMPANY, INC. TRADING AS PLAT-NUM
PERL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3966. Complaint, Dec. 8, 1939—Decision Dec. 11, 1940*

Where a corporation engaged in interstate sale and distribution of manicure products, including nail protector and nail polish remover, in substantial competition with others engaged in sale and distribution of manicure products in commerce as aforesaid, and including some who do not use methods and engage in acts and practices below described—

- (a) Represented in advertisements through such statements as "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails," that its said product was made from or contained olive oil and that by reason of presence of such oil it would improve or benefit the condition of dry, brittle nails, facts being quantity of olive oil therein contained was negligible, it could not be truthfully represented as an olive oil product, and olive oil contained therein was so small as to be incapable of relieving or improving to any appreciable extent condition of dry, brittle nails; and
- (b) Represented through such statements as "Plat-Num Nail Protector * * * encourages growth * * * strengthens nails," disseminated in advertisements among prospective purchasers that its said product stimulated the growth of the nails and strengthened the same, facts being it did not accomplish such results and was wholly incapable of effecting the same;

With effect of misleading and deceiving consuming public into mistaken and erroneous belief that said representations were true and by reason thereof into purchasing substantial quantity of its said products, and with result, as consequence, that trade was unfairly diverted to it from its said competitors; to the substantial injury of competition 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. Gerard A. Rault for the Commission.

Mr. Henry L. Finkelstein, 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 A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, A. Sartorius & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 80 Fifth Avenue, New York, N. Y. Respondent is now, and has been for some time last past, engaged in the sale and distribution in commerce, of manicure products, including a product intended for use as a nail polish remover and a product intended for use as a nail protector.

PAR. 2. Respondent, in the course and conduct of its business aforesaid, has caused its said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid and at all times herein referred to, has been, and is, in substantial competition with other corporations and with firms, partnerships, and individuals similarly engaged in the business of selling and distributing manicure products in commerce, among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not use the methods or engage in the acts and practices herein alleged.

PAR. 4. In the course and conduct of its business respondent has made false and misleading representations with respect to its said nail polish remover, which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails." By the use of such representation, together with others of similar import not specifically set out herein, the respondent represents that its said product is made from or contains olive oil and that said product, by reason of the presence of such oil, will improve or benefit the condition of dry, brittle nails.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the quantity of olive oil contained in said product is negligible and said product cannot truthfully be represented as an olive oil product. The olive oil content in said product is so small as to be incapable of relieving or

Complaint

32 F. T. C.

improving to any appreciable extent the condition of dry, brittle nails.

PAR. 6. Respondent has also made false and misleading representations with respect to its product "Plat-Num Nail Protector," which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement:

Plat-Num Nail Protector * * * encourages growth * * * strengthens nails.

Through the use of such representations, together with other representations of similar import not specifically set out herein, respondent represents that its said product stimulates the growth of the nails and strengthens the nails.

PAR. 7. The foregoing representations are false and misleading. In truth and in fact the use of said product does not stimulate or encourage the growth of the nails nor does it serve to strengthen the nails. Said product is wholly incapable of effecting such results.

PAR. 8. A further practice of the respondent, in connection with the sale and distribution of its said products as aforesaid, is the use of the legend "Manufacturing Chemists" in connection with its corporate name, which said legend appears on respondent's business stationery and on other printed and written matter distributed by respondent among prospective purchasers. Through the use of such legends the respondent represents that it is the manufacturer of its said commodities.

PAR. 9. The foregoing representation is false and misleading. In truth and in fact the respondent does not manufacture either of said products but purchases said products from other sources.

PAR. 10. The use by the respondent of the aforesaid false and misleading representations has the capacity and tendency to, and does, mislead and deceive the consuming public into the mistaken and erroneous belief that said representations are true, and into the purchase of a substantial quantity of respondent's products on account of such beliefs.

As a result thereof, trade has been, and is being, unfairly diverted to respondent from its said competitors, and thereby substantial injury has been done, and is being done to competition in commerce among and between the various States of the United States.

PAR. 11. 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 8th of December 1939, issued and thereafter served its complaint in this proceeding upon said respondent A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, 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 January 31, 1940, 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 through its counsel, Henry L. Finkelstein, 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 such 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 proceedings without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. Sartorius & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 80 Fifth Avenue, New York, N. Y. Respondent is now and has been for some time last past, engaged in the sale and distribution in commerce of manicure products including a product intended for use as a nail polish remover and a product intended for use as a nail protector.

PAR. 2. Respondent in the course and conduct of its business aforesaid has caused its said products when sold to be shipped from its

place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course and conduct of its business as aforesaid and at all times herein referred to has been and is in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the business of selling and distributing manicure products in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are some who do not use the methods or engage in the acts and practices herein described.

PAR. 4. Respondent in the course and conduct of its business has made false and misleading representations with respect to its nail polish remover which representations have been disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails." By the use of such representation together with others of similar import not specifically set out herein, the respondent represents that its said product is made from or contains olive oil and that said product by reason of the presence of such oil will improve or benefit the condition of dry, brittle nails.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the quantity of olive oil contained in said product is negligible and said product cannot truthfully be represented as an olive-oil product. The olive oil content in said product is so small as to be incapable of relieving or improving to any appreciable extent the condition of dry, brittle nails.

PAR. 6. Respondent has also made false and misleading representations with respect to its product "Plat-Num Nail Protector" which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement:

Plat-Num Nail Protector * * * encourages growth * * * strengthens nails.

Through the use of such representations, together with other representations of similar import not specifically set out herein, respondent represents that its said product stimulates the growth of the nails and strengthens the nails.

PAR. 7. The foregoing representations are false and misleading. In truth and in fact, the use of said product does not stimulate or encourage the growth of the nails nor does it serve to strengthen the nails. Said product is wholly incapable of effecting such results.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations has the capacity and tendency to and does mislead and deceive the consuming public into the mistaken and erroneous belief that said representations are true and into the purchase of a substantial quantity of respondent's products because of such belief.

As a result thereof, trade has been and is being unfairly diverted to the respondent from its said competitors and thereby substantial injury has been done and is being done to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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.

It is ordered, That the respondent, A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, or trading under any other name, 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 preparations designated "Plat-Num Olive Oil Compound Nail Polish Remover" and "Plat-Num Nail Protector," or any cosmetic preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

Order

32 F. T. C.

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 advertisement represents, directly or through inference, that said preparation "Plat-Num Olive Oil Compound Nail Polish Remover" will relieve or improve the condition of dry, brittle nails; that said preparation "Plat-Num Nail Protector" stimulates the growth of the nails or strengthens the nails.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories or trading under any other name, its officers, agents, representatives, 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 its cosmetic preparation designated "Plat-Num Olive Oil Compound Nail Polish Remover," or any cosmetic preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

Using the words "Olive Oil," or any other word or words of similar import or meaning, to designate, describe or refer to respondent's cosmetic preparation now designated "Plat-Num Olive Oil Compound Nail Polish Remover," or otherwise representing that said preparation contains any substantial amount of olive oil.

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.

Syllabus

IN THE MATTER OF

ELECTROLYSIS ASSOCIATES, INC., AND LOUIS ZINBERG
AS OFFICER THEREOF AND TRADING AS
BEAUTIDERM COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4144. Complaint, May 28, 1940—Decision, Dec. 11, 1940*

Where a corporation and an individual, who was its president, treasurer and majority stockholder and who, with office and principal place of business at same address, and trading as Beautiderm Co., formed, controlled, and directed its policies, acts, and practices, engaged in interstate sale and distribution of Beautiderm Midget device or apparatus which, recommended for use in the electrolytic removal of superfluous hair by individual self-application at home, was composed principally of an electric battery with two cords terminating respectively in an electrode, and in a needle, for insertion into hair follicle to destroy hair root by electrolysis; in advertisements of their said product which they disseminated and caused to be disseminated through the mails and through various other means in commerce, and otherwise, and through advertisements in newspapers and by circulars, leaflets, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of said product, and acting in conjunction and cooperation with each other—

- (a) Represented that their said Beautiderm Midget was an effective, efficient, safe, and scientific apparatus for electrolytic removal of superfluous hair from the body by individual self-application in the home, and that such removal was permanent, and that use of said device was painless and harmless, and would have no ill effects, facts being it was not an effective, efficient, and scientific apparatus for electrolytic removal of superfluous hair through individual self-application in the home, and would not accomplish results claimed by them, and was not safe, painless, and harmless when used by the unskilled lay public; and
- (b) Failed to reveal that use of said device under conditions prescribed in said advertisements or such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair by electrolysis, might result in serious and irreparable injury to health or permanent disfigurement, including, among results aforesaid, skin burns, pitting and permanent disfigurement, and local infections which, under said circumstances, might cause serious injury to health and, following application to cancerous or syphilitic lesions, not recognizable as such by layman, might result fatally;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase their said device or apparatus: