

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:

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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.

Mr. James L. Baker, for the Commission.

Mr. Irving Payson Zinbarg, of New York City, for respondents.

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 Electrolysis Associates, Inc., a corporation, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Co., hereinafter referred to as respondents, have 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. Electrolysis Associates, Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 1451 Broadway, New York, N. Y. Louis Zinberg is an individual, trading as Beautiderm Company and is also president, treasurer and majority stockholder of Electrolysis Associates, Inc., with his office and principal place of business at the same address as said corporate respondent.

Respondent, Louis Zinberg, as an officer of said corporate respondent, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. Said respondents act in conjunction and cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as the Beautiderm Midget, recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of their business, the respondents cause said device or apparatus when sold to be transported from their 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.

Respondents maintain and at all times mentioned herein, have maintained a course of trade in said device or apparatus 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various 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 said product; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Don't say you can't afford electrolysis for the permanent removal of embarrassing hair on the face or legs. There's no excuse because now there's a new, small apparatus exactly like the larger ones professionals use with which you can permanently rid yourself of this handicap at home.

Electrolysis is permanent! You can remove this disfiguring hair yourself easily and safely with a little care and skill at home.

An inexpensive, easily operated apparatus for home use.

The convenience of having a treatment any time you want it right in your own room.

When you consider that you are giving yourself treatments that would cost you several hundred dollars if taken at a salon in a big city, the cost of your Beautiderm seems almost negligible. Easy to use.

How simple it is to insert the needle. It can be operated by amateurs without injury.

It does not require a person of experience to operate the machine.

Absolute safety assured.

The method of electrolysis is the one method advised by physicians as absolutely safe.

The Beautiderm Midget offers a safe and permanent method of removing superfluous hair.

No plan equals in permanence and safety the use of the electric needle.

The only means of permanently and safely removing superfluous hair is electrolysis.

If you would be free from the embarrassment of ugly, excess hair, remove it forever this safe, permanent, inexpensive way with a Beautiderm Midget.

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No pitting or scarring of the skin or burning of the tissues result when the Beautiderm Midget removes hair.

Can't possibly cause serious injury in any way.

Those who are opposed to electrolysis on the assumption that the electric needle is dangerous are laboring under a misapprehension.

Electrolysis is absolutely painless.

The Beautiderm method of removing hair by electrolysis is absolutely harmless.

Electrolysis is a scientific effacer of disfiguring hair. An effective inexpensive apparatus.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their device, designated as Beautiderm Midget, is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that the removal of said hair is permanent, that its use is painless and harmless and will have no ill effects upon the human body.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondents as aforesaid, designated as Beautiderm Midget, is composed principally of an electric battery to which is attached two cords, one cord terminating in an electrode and the other cord terminating in a needle. The said needle is inserted into the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious injury to health. The said device is not an effective, efficient and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device will not accomplish the result claimed by the respondents and is not safe, painless, and harmless when used by the unskilled lay public.

PAR. 6. In addition to the representations hereinabove set forth, the respondents have also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said device under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

The use of said device under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, may result in serious or irreparable injury to health or permanent disfigurement.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scarring, metallic tattoo marks, pitting and permanent disfigurement. When infection occurs in the nose, on the upper lip,

or over the glabella, it may be so serious as to cause serious injury to health, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to their device or apparatus, disseminated as aforesaid, 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 statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device or apparatus.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 28, 1940, issued, and on May 29, 1940, served its complaint in this proceeding upon respondents, Electrolysis Associates, Inc., a corporation, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Company, charging them with the use of 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 respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure 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. Electrolysis Associates, Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State

of New York, with its office and principal place of business at 1451 Broadway, New York, N. Y. Louis Zinberg is an individual trading as Beautiderm Company and is also president, treasurer, and majority stockholder of Electrolysis Associates, Inc., with his office and principal place of business at the same address as said corporate respondent.

Respondent Louis Zinberg, as an officer of said corporate respondent, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. Said respondents act in conjunction and cooperation with each other in performing the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as the Beautiderm Midget, recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of their business, the respondents cause said device or apparatus when sold to be transported from their 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.

Respondents maintain and at all times mentioned herein, have maintained a course of trade in said device or apparatus 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various 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 said product; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Don't say you can't afford electrolysis for the permanent removal of embarrassing hair on the face or legs. There's no excuse because now there's a new, small apparatus exactly like the larger ones professionals use with which you can permanently rid yourself of this handicap at home.

Electrolysis is permanent! You can remove this disfiguring hair yourself easily and safely with a little care and skill at home.

An inexpensive, easily operated apparatus for home use.

The convenience of having a treatment any time you want it right in your own room.

When you consider that you are giving yourself treatments that would cost you several hundred dollars if taken at a salon in a big city, the cost of your Beautiderm seems almost negligible. Easy to use.

How simple it is to insert the needle. It can be operated by amateurs without injury.

It does not require a person of experience to operate the machine.

Absolute safety assured.

The method of electrolysis is the one method advised by physicians as absolutely safe.

The Beautiderm Midget offers a safe and permanent method of removing superfluous hair.

No plan equals in permanence and safety the use of the electric needle.

The only means of permanently and safely removing superfluous hair is electrolysis.

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No pitting or scarring of the skin or burning of the tissues result when the Beautiderm Midget removes hair.

Can't possibly cause serious injury in any way.

Those who are opposed to electrolysis on the assumption that the electric needle is dangerous are laboring under a misapprehension.

Electrolysis is absolutely painless.

The Beautiderm method of removing hair by electrolysis is absolutely harmless.

Electrolysis is a scientific effacer of disfiguring hair. An effective inexpensive apparatus.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their device, designated as Beautiderm Midget, is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that the removal of said hair is permanent, that the use of such device is painless and harmless and will have no ill effects upon the human body.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondents as aforesaid, designated as Beautiderm Midget, is composed principally of an electric battery to which is attached two cords, one cord terminating in an electrode and the other cord terminating in a needle. The said needle is inserted into

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the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious injury to health. The said device is not an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device will not accomplish the result claimed by the respondents and is not safe, painless, and harmless when used by the unskilled lay public.

PAR. 6. In addition to the representations hereinabove set forth, the respondents have also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said device under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

The use of said device under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, may result in serious or irreparable injury to health or permanent disfigurement.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scarring, metallic tattoo marks, pitting, and permanent disfigurement. When infection occurs in the nose, on the upper lip or over the glabella, it may be so serious as to cause serious injury to health, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device or apparatus, disseminated as aforesaid, 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 statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device or apparatus.

CONCLUSION

The aforesaid acts and practices of the respondents 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 and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Electrolysis Associates, Inc., a corporation, and its officers, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Co., or trading under any other name or names, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their device or apparatus designed for the electrolytic removal of hair and advertised as "Beautiderm Midget," or of any other device or apparatus of substantially similar composition or construction, or possessing substantially similar properties, whether sold under the same name or under 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 such device or apparatus is an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that its use is painless, safe, and harmless and will have no ill effects upon the human body when used by the unskilled lay public; or that the removal of said hair is permanent; or which advertisements fail to reveal that the use of said device or apparatus by persons not trained in the technique of removing superfluous hair from the human body by electrolysis may result in permanent disfigurement, or cause infections or other irreparable injury to health.

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 such device or apparatus, which advertisements contain any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said device or apparatus by persons not trained in the technique of

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removing superfluous hair from the human body by electrolysis may result in permanent disfigurement or cause infections or other irreparable injury to health.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

CHARLES H. PHILLIPS CHEMICAL COMPANY

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

Docket 3959. Complaint, Nov. 27, 1939—Decision, Dec. 12, 1940

Where a corporation engaged in manufacturing and compounding its "Milk of Magnesia Cleansing Cream" and its "Milk of Magnesia Texture Cream," and in interstate sale and distribution thereof; in advertisements of said products which it disseminated and caused to be disseminated through the mails and otherwise in commerce, and by other means, and by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce, and by continuities broadcast from radio stations of extrastate audience, and which were intended and likely to induce purchase of its said products—

- (a) Represented, directly and by implication, that there is a disease or abnormal pathological condition of the skin known or properly described as "acid skin," and that skin blemishes such as blackheads, enlarged pores, oily shine and dry, scaly roughness are caused by "acid skin" or excess fatty acid accumulations, and that use of either or both of said products would cure or overcome such conditions and effects, and were effective in treating same; and
- (b) Represented that use of either or both of its said products neutralized external excess fatty acid accumulations in the same way that milk of magnesia neutralizes excess acid in the stomach, and that use of its "Texture Cream" improved texture of skin and freed same from oiliness, and that its "Cleansing Cream" penetrated pores of skin and thoroughly cleansed same;

Facts being that acid neutralization of skin is not accomplished in same way as above set forth and is not necessary to maintenance of a healthy skin condition, there is no such disease or abnormal condition, as above set forth, as "acid skin," nor will its said products, whether used singly or jointly, cure or overcome such purported condition, skin blemishes such as blackheads and others above set forth are not caused by "acid skin" or excess fatty acid accumulations thereon, and its said products, whether used singly or jointly, will not cure or overcome such blemishes or have any value in treatment thereof or affect roughness, blackheads, excess or accumulated oil, or enlarged pore openings in excess of (a) temporarily relieving roughness of skin due solely to dryness, (b) aiding in removal of blackheads, by removing accumulated dirt, foreign matter, or skin excretions lodged in exterior openings of pores or present on surface, (c) temporarily removing oily shine by removing excess or accumulated oil, and (d) aiding in reduction of enlarged pore openings when caused solely by accumulated dirt, foreign matter or skin excretions lodged in exterior openings of pores, and its said "Texture Cream" does not change or affect texture of skin in histological sense, or free it from oiliness, though of possible value in temporarily removing excess or accumulated oil, and its "Cleansing Cream" will not penetrate pores or thoroughly clean skin, except as it acts upon dirt and other foreign matter possibly present on surface and in exterior openings of pores;