

IN THE MATTER OF
PRIMROSE HOUSE, INC., AND DELV, LIMITED

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

Docket 3314. Complaint, Jan. 26, 1938—Decision, Dec. 18, 1940

Where a corporation engaged in interstate sale and distribution, and second concern, its wholly owned subsidiary, engaged in manufacture, and similar sale and distribution, of various cosmetics, including "Dely Skin Cream," in active and substantial competition with others engaged in similar sale and distribution of such products—

Represented through various kinds of advertising media, such as radio broadcasts and printed matter circulated among prospective purchasers in various States and in the District of Columbia, that their said "Dely" contained an ingredient which acted on the skin as the natural fluids and served same purpose as such fluids, and would rid the skin of wrinkles, and large and unsightly pores, and would nourish and rejuvenate the skin and create new skin texture and keep face young and complexion beautiful;

Facts being that said cream contained no ingredient which acted on skin as natural fluids thereof, and would not serve same purpose as said fluids, or nourish or rejuvenate skin, or create new texture of skin, which is nourished or fed by blood stream and condition and appearance of which are determined by many factors, including general health, condition of blood and exposure to various external conditions, and said cream would not keep face young or skin beautiful, or remove wrinkles or large unsightly pores or any other imperfections from the skin, or keep complexion beautiful and skin free from imperfections, which cannot be produced by means of cosmetic alone;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such representations were true, and as result of such belief, thus engendered, of inducing substantial portion of said public to purchase said skin cream, and of thereby diverting trade to themselves from their competitors, who do not practice such deception; to the substantial injury of said competitors in said commerce and to the injury of the public:

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.

Before *Mr. W. W. Sheppard* and *Mr. Randolph Preston*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles P. G. Fuller, of Chadbourne, Hunt, Jaeckel & Brown, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Primrose House, Inc., a corporation, and Delv, Limited, a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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, Primrose House, Inc., is a Delaware corporation, organized August 31, 1926, and doing business at 111 Eighth Avenue, New York, N. Y. Respondent, Delv, Limited, is a New York corporation, organized November 11, 1936, and doing business at 76 Ninth Avenue, New York, N. Y. The respondent, Delv, Limited, is a wholly owned subsidiary of respondent, Primrose House, Inc., which controls and directs its policies and practices. Both of said corporations are engaged in the manufacture, sale, and distribution of cosmetics.

When orders are received for their cosmetics, respondents ship the products from their respective places of business in New York, N. Y., to the purchasers thereof located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been for several years last past, a course of trade in commerce, in said cosmetics sold and distributed by respondents, between and among the various States of the United States and in the District of Columbia.

Respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In aid of the sale of one of their products, a skin cream now designated as Delv, the respondents in the course and conduct of their business as aforesaid have stated, and still state, through various types of advertising media such as periodicals having an interstate circulation, by radio broadcasts, and in various other ways, as follows:

I'll tell you what I am going to share with you—and that is a little tip on how to keep your face young and your complexion beautiful. I told you a few minutes ago about the rapidity with which DELV—DELV—DELV All-purpose Cream cleanses, lubricates and clarifies.

It cleanses, nourishes, clarifies all in one.

All those tell-tale wrinkles seem smoothed and ironed out and large unsightly pores seem to fade away and vanish.

You see the vital oils and ingredients in DELV are blended on a new cosmetic principle.

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DELV is absolutely different from anything else you have ever used—different from anything else you can buy—because it is made with an ingredient new to the cosmetic industry. The vital oils in DELV are blended together and then whipped.

Respondents also use other advertisements containing the same statements or other statements of similar import and effect. The above statements are merely illustrative.

The respondent, Primrose House, Inc., also has advertised said cream as follows:

* * * DELV is a delightful new cream that literally creates a new skin texture * * *.

Smart women who have used it are enthusiastic about its * * *, stimulating effect. Its regular daily use keeps the skin * * * young and vital * * *.

It * * * nourishes, clarifies and tends to rejuvenate. * * * It penetrates * * * leaving the skin vitally refreshed and youthful looking.

DELV—rejuvenates.

DELV * * * was created by Primrose House after long research to find an ingredient that duplicates the natural oil of the skin.

DELV is based upon a new cosmetic principle for it contains a precious new beauty ingredient. This ingredient, called "Triactin" has the same action on the skin as the skin's own gland fluids that keep it young and vital.

PAR. 3. By means of the foregoing statements and other statements of similar import and effect not herein set out in detail, the respondents have represented and now represent to purchasers, prospective purchasers, and the public generally that their said skin cream will keep the face young and the complexion beautiful and that it will nourish the skin. They further represent that said cream will cause wrinkles and unsightly pores to fade away or vanish from the skin; that said cream is manufactured or blended on a new cosmetic principle; that it contains an ingredient new to the cosmetic industry; and that said cream is different from anything else on the market.

The respondent, Primrose House, Inc., has also represented among other things that said cream will create a new skin texture and will keep the skin young and vital; that it will nourish and rejuvenate the skin; that it contains a new ingredient which has the same action on the skin as the skin's own gland fluids and duplicates the natural oil of the skin.

In truth and in fact, respondents' said cream will not keep the face young and the complexion beautiful. It will not nourish and rejuvenate the skin which obtains its food from and is nourished by the blood stream as are the other parts of the body. It will not cause wrinkles and unsightly pores to fade away or vanish from the skin and it will not create a new skin texture. Said facial cream is not manufactured or blended on a new cosmetic principle; it does not contain an ingredient new to the cosmetic industry and it is not abso-

lutely different from anything else on the market. Dely does not contain a new ingredient which acts on the skin as the skin's own gland fluids and it does not serve the same purpose as the natural oil of the skin.

PAR. 4. The use by respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said cream because of such erroneous beliefs.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of cosmetics who do not misrepresent the beneficial uses and qualities, method of manufacture, or composition of their respective products, and who likewise sell and distribute cosmetics in commerce among and between the various States of the United States and in the District of Columbia. By use of the representations aforesaid trade has been, and is now being, unfairly diverted to respondents from their said competitors. Thereby substantial injury is being and has been done by respondents to competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 26, 1938, issued and subsequently served its complaint in this proceeding upon respondents, Primrose House, Inc., a corporation, and Dely, Limited, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Charles P. G. Fuller, attorney for the respondents, before W. W. Sheppard and Randolph Preston, examiners 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 the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (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. The respondent, Primrose House, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has its office and principal place of business at 111 Eighth Avenue, New York, N. Y. It is now and has been for several years last past engaged in the sale and distribution of various cosmetics, including a skin cream sold under the trade name "Delv."

The respondent, Delv, Limited, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its principal office and place of business are located at 76 Ninth Avenue, New York, N. Y. It is now and has been for several years last past engaged in the manufacture and in the sale and distribution of various cosmetics, including the said skin cream Delv. Respondent, Delv, Limited, is a wholly owned subsidiary of the respondent, Primrose House, Inc.

The respondents cause their said products, including the aforesaid skin cream, when sold, to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof located in various States of the United States and in the District of Columbia. During all the time mentioned herein, respondents have maintained a course of trade in said cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

During all the time mentioned herein, respondents have been in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Primrose House Sales Co., Inc., a wholly owned subsidiary of respondent, Primrose House, Inc., with identical officers and directors, was engaged in the sale and distribution of said skin cream, Delv, as aforesaid, from January 1934 to May 1935, at which time it was dissolved and its assets were taken over and utilized by

its parent company, Primrose House, Inc. During the period of existence of said Primrose House Sales Co., Inc., its policies and practices were dominated and controlled by respondent, Primrose House, Inc.

During the time mentioned above and in the course and conduct of its business, as aforesaid, Primrose House Sales Co., Inc., in promoting the sale of the skin cream, Delv, advertised said cream by means of various kinds of advertising media such as radio broadcasts and by printed matter circulated among prospective purchasers of said cream located in various States of the United States and in the District of Columbia. Typical of and among the various representations used as aforesaid are the following:

* * * DELV is a delightful new cream that literally creates a new skin texture * * *.

Smart women who have used it are enthusiastic about its * * * stimulating effect. Its regular daily use keeps the skin * * * young and vital * * *.

It * * * nourishes, clarifies and tends to rejuvenate. * * * It penetrates * * * leaving the skin vitally refreshed and youthful looking.

DELV—rejuvenates.

DELV * * * was created by Primrose House after long research to find an ingredient that duplicates the natural oil of the skin.

DELV is based upon a new cosmetic principle, for it contains a precious new beauty ingredient. This ingredient, called "Triactin," has the same action on the skin as the skin's own gland fluids that keep it young and vital.

PAR. 3. In May 1935 Primrose House Sales Co., Inc., entered into a stipulation with the Federal Trade Commission by which it agreed to abandon the use of certain allegedly false representations in connection with the sale of the said skin cream, Delv. Among the representations which Primrose House Sales Co., Inc., agreed, by the aforesaid stipulation, to abandon are the following:

1. That the unhealthy functioning of an oily skin will be corrected through the daily use of said face cream, or that it will correct the cause of any ailment of the skin.

2. That said face cream will nourish the skin.

3. That said face cream will make or keep the skin young or vital.

4. That said face cream tends to or will bring new life to the skin.

Said company also agreed to cease and desist from making any other claims or assertions of like import.¹

PAR. 4. Notwithstanding the aforesaid agreement to cease and desist the respondents have, since May 1935, in promoting the sale of the said cream, Delv, advertised said cream by means of various kinds of advertising media such as radio broadcasts and by printed

¹ 20 F. T. C. 678.

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matter circulated among prospective purchasers of said cream located in various States of the United States and in the District of Columbia. Typical of and among the various representations used by respondents as aforesaid are the following:

I'll tell you what I am going to share with you—and that is a little tip on how to keep your face young and your complexion beautiful. I told you a few minutes ago about the rapidity with which DELV—DELV—DELV All-purpose Cream cleanses, lubricates and clarifies.

It cleanses, nourishes, clarifies all in one.

All those tell-tale wrinkles seem smoothed and ironed out and large unsightly pores seem to fade away and vanish.

You see the vital oils and ingredients in DELV are blended on a new cosmetic principle.

DELV is absolutely different from anything else you have ever used—different from anything else you can buy—because it is made with an ingredient new to the cosmetic industry. The vital oils in DELV are blended together and then whipped.

PAR. 5. By the use of the aforesaid representations, and others of similar import but not set out herein, the respondents have represented, among other things, that their said skin cream, Delv, contains an ingredient which acts on the skin as the natural fluids of the skin and that it serves the same purpose as such fluids; that it will rid the skin of wrinkles, large and unsightly pores, and other imperfections; that it will nourish and rejuvenate the skin and that it will create a new skin texture; and that it will keep the face young and the complexion beautiful.

PAR. 6. The Commission finds that the respondents' said cream, Delv, does not contain any ingredient which acts on the skin as the natural fluids of the skin, and that said cream will not serve the same purpose as such fluids. Said cream will not nourish or rejuvenate the skin or create a new skin texture. The skin is nourished or fed by the blood stream and the condition and appearance of the skin are determined by many factors, including the general health, the condition of the blood, and exposure to various external conditions. Said cream will not keep the face young or the skin beautiful, nor will it remove wrinkles or large unsightly pores or any other imperfections from the skin. A beautiful complexion or a skin free from imperfections cannot be produced by the use of a cosmetic alone.

PAR. 7. The use by respondents of the foregoing false and misleading statements and representations has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of substantial quantities of respondents' said skin cream "Delv" as a result of such erroneous and mistaken belief. In consequence, trade

has been diverted unfairly to respondents from their competitors in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 respondents, testimony and other evidence taken before W. W. Sheppard and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (oral argument not having been requested), 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, Primrose House, Inc., a corporation, and Delv, Limited, a corporation, their officers, 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 respondents' cosmetic preparation designated "Delv" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Representing that respondents' preparation acts on the skin as the natural fluids of the skin, or that it serves the same purpose as the natural fluids of the skin.

2. Representing that said preparation will cause wrinkles, large or unsightly pores, or other imperfections to disappear from the skin.

3. Representing that said preparation will nourish or rejuvenate the skin or that it will create a new skin texture.

4. Representing that said preparation will keep the face young or the complexion beautiful.

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

IN THE MATTER OF

GEORGE W. BRENNER AND JOHN M. KURTZ, DOING
BUSINESS AS PATENT SPECIALTIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4336. Complaint, Oct. 9, 1940—Decision, Dec. 18, 1940*

Where two individuals engaged in manufacture of their Magic Wand Welder and of their Super Magic Wand Welder, and in interstate sale thereof; in advertising their said devices through trade publications and circulars—

- (a) Represented that their said Magic Wand Welder was a heavy-duty welder which was of practical use in shop welding and a device which would generate sufficient heat when connected with an automobile storage battery to prepare materials for welding, facts being it was not such a heavy-duty device, but was light and flimsy in construction and would not, connected to such a battery, generate sufficient heat when used according to instructions to prepare any material for proper welding; and
- (b) Represented that their said Super Magic Wand Welder was a tool built for use and useful for heavy-duty in welding base metals of all kinds, and more particularly, cylinder blocks and heavy parts of mechanical and farm machinery, and that it would heat such metals to such an extent so that they would run and a proper weld could be effected, and that its construction was sturdy enough to withstand such hard use and electric current necessary for such welding, facts being it was not a heavy-duty tool, but was very flimsy and weakly constructed, wires were small gauge and easily overheated, and clamps were light weight with cheap, inferior fasteners, and it was not built for heavy electric welding, was not compact and efficient, and heat generated thereby was insufficient, except on extremely thin metals and not over $\frac{1}{16}$ of an inch in thickness, to do satisfactory welding job;
- (c) Represented, furthermore, that said Super Magic Wand Welder conformed in design and construction to standard required for such devices, and was safe to operate on ordinary AC or DC branch household circuit, and that operation thereof would not injure either operator or branch electric current to which attached, and that it was a safe and efficient device to use in securing a "sun tan" on the skin, facts being register units were poorly housed and not securely fastened to wood ends of case; tubes leading from handles were of light, inferior material and not insulated for safety to operator; and in other respects it did not conform to standard methods of design or construction of electric devices from viewpoint of suitability of materials or proper guarding and spacing of live electrical parts, so as reasonably to safeguard life and property; flimsy construction thereof made it difficult to safeguard operator from shock; use thereof would in fact necessitate special wiring; it was extremely dangerous both to anyone using it and to wiring of any ordinary house circuit to which it might be attached, and could not be operated with safety; wiring supplied therewith was too light to prevent dangerous heating, and while flame produced by carbon arc of device would burn the skin and produce so-