

Syllabus

IN THE MATTER OF
HALL & RUCKEL, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3389. Complaint, Apr. 26, 1938—Decision, Dec. 27, 1940*

Where a corporation engaged in preparation, in cream and powder form, of its "X-Bazin" depilatory, and in interstate sale and distribution thereof, in substantial competition with others also engaged in sale and distribution, in commerce, of preparations manufactured, advertised, and sold as depilatories, and including many who make, distribute and sell to purchasing public preparations recommended as such, and who in no way misrepresent the efficacy, properties or nature of their respective products; in advertising its said "X-Bazin" in newspapers and other periodicals of general circulation throughout the United States, and through advertising folders and other advertising matter distributed among prospective purchasers—

- (a) Represented that its said preparation discouraged growth of hair and delayed appearance thereof for a material length of time, and that hair was much slower in returning or regrowing than when it was shaved or otherwise removed, and that it would permanently eradicate hair; and
- (b) Represented that hair returning or regrowing after use of its said preparation was softer and less coarse than that returning or regrowing after shaving, and that its said product gave results unlike other methods of hair removal;

Facts being its said "X-Bazin" would not discourage growth of hair or delay appearance thereof for any material length of time, nor permanently remove hair from the body, nor lessen future growth thereof nor devitalize roots of the hair, hair was not appreciably slower in returning or regrowing than it was following other methods of hair removal, and, while regrowth of hair removed by depilatory might, as compared with regrowth of that removed by razor, give impression of being softer than original, it would not in fact be any less coarse or any softer than other, but hair follicle would in any case retain its original diameter and hair regrowing after use of depilatory would have exactly same characteristics as that growing before such removal; and

- (c) Represented that its product was not caustic and was entirely safe and harmless, and had been and was endorsed by scientists and physicians;

Facts being that while it was reasonably safe for use by most individuals, it was not entirely safe in all cases, certain persons being susceptible or hypersensitive to chemicals contained in depilatories, including barium sulphide contained in said product, and responsible for caustic action thereof, persons thus susceptible develop inflammation of the follicles or pores in the skin and, in some instances where reactions in the hair follicles is more severe, folliculitis or, in case of more severe infection of same type, carbuncles, which often have appearance of pimples and may conduce to formation of boils, and its said product was not and never had been endorsed or recommended by scientists or physicians;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such false and misleading claims and representations were true, and into purchase of substantial quantity of its product as a result of such erroneous belief, and with result that trade was diverted unfairly to it from its competitors aforesaid; to the substantial injury of competition in commerce

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and substantial injury of competition in commerce:

Before *Mr. Robert S. Hall*, *Mr. John J. Keenan*, *Mr. Edward E. Reardon*, and *Mr. John W. Addison*, trial examiners.

Mr. Floyd O. Collins and *Mr. Merle P. Lyon* for the Commission.
Mock & Blum, 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 Hall & Ruckel, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hall & Ruckel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office at 241 Thirty-seventh Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling a preparation represented to be a depilatory. Said preparation is marketed in both a cream and powder form and designated "X-Bazin." Said preparation is sold and recommended by respondent for removing superfluous hair and other hair from the human body. Respondent causes said product, when sold, to be shipped and transported in commerce from its place of business located in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York. It maintains, and has at all times mentioned herein maintained, a course of trade in said product 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, is now, and at all times herein referred to has been, in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in commerce

among and between the various States of the United States and the District of Columbia of other preparations prepared, manufactured, advertised, and sold as depilatories.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing individuals to purchase its preparation "X-Bazin," has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and has printed certain advertising folders, literature, and other advertising matters, in all of which the respondent has caused the firm name and the name of the said preparation to be prominently and conspicuously displayed, and in which the following statements are made:

The special formula of X-Bazin actually retards the growth of hair. When the regrowth does come, it is much softer and less conspicuous than before. The skin is left smooth, soft, and white.

DON'T BE AN AIREDALE. In the merciless slang of Hollywood, a girl with hair on arms and legs is "an Airedale." That's why film stars take hair off and keep it off with X-Bazin, the safe, efficient, and reliable hair remover.

Spread mild, creamy X-Bazin over your limbs and under arms. With beautiful certainty it destroys the hair swiftly, completely, avoiding the blue look—and the irritation—that comes from shaving. X-Bazin leaves your skin virginally white, smooth and hair-free—and definitely discourages re-growth.

Generations of women have found that the safest and most reliable method for removing unwanted hair. The special formula of X-Bazin actually retards the growth of hair. Do not confuse X-Bazin with common depilatories. Its mild ingredients contrast with the harsh action of ordinary hair removing preparations. Eminent physicians endorse X-Bazin for its perfect safety, speed, and convenience.

No other process of removing unwanted hair so successfully combines ease and thoroughness with perfect safety.

All of said statements, together with many similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product "X-Bazin." In all of its advertising and literature respondent represents, through statements and representations herein set-out and other statements of similar import and effect, (a) that its product is not caustic; (b) that its product is entirely safe and harmless; (c) that its product discourages the growth of hair, delays its appearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved or otherwise removed; (d) that the hair returning or regrowing after using X-Bazin is softer and less coarse than the hair returning or regrowing after shaving; (e) that its product gives results unlike other methods of hair removal; (f) that its product will permanently eradicate hair; and (g) that its product has been and is endorsed by scientists and physicians.

PAR. 5. The claims and representations made by the respondent with respect to the properties, nature and effect of its product when used are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product is caustic; it does not discourage the growth of hair or delay its appearance for any material length of time, and the hair is not appreciably slower in returning or regrowing than it is following the use of other methods of hair removal; the hair that returns after using X-Bazin is not softer and less coarse than the hair returning after the use of other methods of hair removal; said product, X-Bazin, will not permanently remove hair from the human body, neither will it definitely discourage or lessen the future growth or devitalize the roots of hair; it is not entirely safe and harmless, but, on the contrary, its use will cause burning, smarting and irritation and have other injurious effect upon the skin; said product is not, and has not been, recommended by scientists and physicians.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell to the purchasing public preparations recommended as depilatories who in no way misrepresent the efficacy, properties, or nature of the preparation manufactured and sold by them.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its preparation "X-Bazin" and the efficacy of said preparation, as hereinabove set out, in offering for sale and selling said preparation, were and are calculated to, and had and now have, the tendency and capacity to, and did, and do now mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true, and into the purchase of a substantial quantity of respondent's preparation in reliance upon said erroneous belief. As a direct consequence of said mistaken and erroneous beliefs, induced by the respondent's representations as hereinabove set out, a substantial number of the consuming public has purchased a substantial amount of respondent's preparation, with the result that trade has been diverted unfairly to the respondent from competitors likewise engaged in selling and distributing preparations which are recommended and sold as depilatories. As a direct result of the false and misleading representations of the respondent injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 April 26, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Hall & Ruckel, Inc., a corporation, charging respondent 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint, and in opposition thereto, were introduced before trial 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, the testimony and other evidence, and briefs and oral argument in support of the complaint, and in opposition thereto, 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 FACT

PARAGRAPH 1. Respondent, Hall & Ruckel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office at 241 Thirty-Seventh Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling a depilatory in both a cream and powder form, designated "X-Bazin." Said preparation is sold and recommended by respondent for removing superfluous hair and other hair from the human body. Respondent causes said product, when sold to be shipped and transported from its place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York, and in the District of Columbia. It maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is now, and at all times herein referred to has been, in substantial competition with other corporations and with individuals, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States, and in the District of

Columbia, of preparations manufactured, advertised, and sold as depilatories.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its preparation "X-Bazin," respondent has caused advertisements to be inserted in newspapers, magazines and other periodicals of general circulation throughout the United States, and has distributed among prospective purchasers certain advertising folders and other advertising matter, in all of which the respondent has caused the name of said preparation to be prominently and conspicuously displayed, and in which the following statements are made:

The special formula of X-Bazin actually retards the growth of hair. When the regrowth does come, it is much softer and less conspicuous than before. The skin is left smooth, soft and white.

Don't Be An Airedale. In the merciless slang of Hollywood, a girl with hair on arms or legs is "an Airedale". That's why film stars take hair off and keep it off with X-Bazin, the safe, efficient, and reliable hair remover.

Spread mild, creamy X-Bazin over your limbs and under arms. With beautiful certainty it destroys the hair swiftly, completely, avoiding the blue look—and the irritation—that comes from shaving. X-Bazin leaves your skin virginally white, smooth and hair-free—and definitely discourages regrowth.

Generations of women have found that the safest and most reliable method for removing unwanted hair. The special formula of X-Bazin actually retards the growth of hair. Do not confuse X-Bazin with common depilatories. Its mild ingredients contrast with the harsh action of ordinary hair removing preparations. Eminent physicians endorse X-Bazin for its perfect safety, speed and convenience.

No other process of removing unwanted hair so successfully combines ease and thoroughness with perfect safety.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product "X-Bazin." In all of its advertising literature respondent represents, through statements and representations herein set out and other statements of similar import and effect, (a) that its product is not caustic; (b) that its product is entirely safe and harmless; (c) that its product discourages the growth of hair, delays its appearance for a material length of time, and that the hair is much slower in returning or regrowing than when the hair is shaved or otherwise removed; (d) that the hair returning or regrowing after using X-Bazin is softer and less coarse than the hair returning or regrowing after shaving; (e) that its product gives results unlike other methods of hair removal; (f) that its product will permanently eradicate hair; and (g) that its product has been and is endorsed by scientists and physicians.

PAR. 5. Respondent's X-Bazin cream contains barium sulphide, calcium carbonate, glycerine, perfume, and water. Respondent's preparation X-Bazin powder contains barium sulphide, calcium carbonate, and starch to be mixed with water into a paste at the time of use.

Respondent sells much more of the cream than it sells of the powder. The latter is sold principally to old-time users, constituting only a negligible quantity of the entire product sold. Respondent claims to have sold over ten million tubes of the cream X-Bazin since its inception.

PAR. 6. The claims and representations made by the respondent with respect to the properties, nature, and effect of its product when used are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product accomplishes its function through the solvent action of the ingredient barium sulphide upon the horny epithelial cells of the hair and contains a sufficient amount of this ingredient to render the action of the product caustic. The barium sulphide is the ingredient which is the efficient cause of that reaction. Chemical depilatories in common use contain sulphides of barium, sodium, and strontium. Respondent's product is a common depilatory, and does not differ in its properties and effects from other chemical depilatories. In addition to the use of chemical depilatories, superfluous or unwanted hair may be removed from the human body, (1) by the use of electrolysis, a permanent but expensive procedure, (2) by shaving, and (3) by mechanical depilatories such as melted wax, which forcibly removes the hair by the application of force after the wax has hardened. Depilatories and shaving alike remove hair only temporarily and do not permanently eradicate hair. The temporary removal of hair by such methods does not affect the papillae from which hair originates, nor the hair growth below the surface of the skin.

In truth and in fact, respondent's product, X-Bazin, does not discourage the growth of hair or delay its appearance for any material length of time, and the hair is not appreciably slower in returning or regrowing than it is following the use of other methods of hair removal. The hair that returns after the use of X-Bazin is not softer or less coarse than the hair returning after the use of other methods of hair removal. Said product, X-Bazin, will not permanently remove hair from the human body, nor lessen the future growth of hair, nor devitalize the roots of the hair.

Removal of hair by a depilatory, due to the solvent action, might, leave a rounded top on the regrowing hair, as compared with the sharp edge produced by shaving with a razor. The regrowth of

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hair might, therefore, give the impression of being softer than the original hair, but in fact it would not be any less coarse or any softer than the regrowth of hair after shaving. The hair follicle would retain its original diameter in any case, and hair regrowing after the use of depilatories has exactly the same characteristics as hair growing before such removal.

While respondent's product is reasonably safe for use by most individuals, it is not entirely safe in all cases. Certain persons are susceptible or hypersensitive to the chemicals contained in depilatories, including the barium sulphide found in respondent's product, and the use of respondent's product by such persons may be followed by an irritation, causing a dermatitis or inflammation of the skin. Occasionally such persons will develop what is known as folliculitis, an inflammation of the follicles or pores in the skin, and in some instances, where this reaction in the hair follicles is more severe, such persons develop folliculosis, or in cases of a more severe type of the same infection, carbuncles. The dermatitis often has the appearance of pimples and may conduce the formation of boils. Respondent's product is not, and never has been, endorsed or recommended by scientists or physicians.

PAR. 7. There are among respondent's competitors many who manufacture, distribute and sell to the purchasing public preparations recommended as depilatories who in no way misrepresent the efficacy, properties or nature of the products manufactured and sold by them.

PAR. 8. The use by the respondent of said false and misleading statements and representations in connection with the offering for sale, sale and distribution of respondent's product has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said claims and representations are true, and into the purchase of a substantial quantity of respondent's product as a result of such erroneous belief. Thereby trade has been diverted unfairly to the respondent from its said competitors, and in consequence substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hall & Ruckel, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its product designated "X-Bazin," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That said product is not caustic.
2. That said product is in all cases entirely safe or harmless.
3. That said product discourages the growth of hair, or delays the appearance of hair for any substantial period of time, or that the hair is appreciably slower in returning or regrowing after the use of respondent's product than when the hair is shaved or otherwise removed.
4. That the hair returning or regrowing after the use of respondent's product is softer or less coarse than the hair returning or regrowing after shaving.
5. That the results obtained from the use of said product differ essentially from the results obtained from the use of other methods of hair removal.
6. That said product permanently eradicates hair.
7. That said product has been endorsed or recommended by scientists or physicians.

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
KONGO CHEMICAL COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4193. Complaint, July 24, 1940—Decision, Dec. 28, 1940

Where a corporation engaged in manufacture of its "Kongolene" hair cosmetic, and in interstate sale and distribution thereof, and also for use in connection therewith, its "Ebonized Ground Oil", or dark-colored, perfumed vaseline, and which it directed purchasers of said "Kongolene" to apply to their hair after they had used same; in advertisements of said "Kongolene" which it disseminated and caused to be disseminated through the mails and by various other means in commerce, and in other ways, and including circulars and other advertising literature, etc.; and which advertisements were intended and likely to induce purchase of its said preparation—

- (a) Represented, directly and by implication, that said "Kongolene" was a purely vegetable product, and that use thereof would straighten the hair and stop it from falling out and promote growth thereof, and cure and permanently remove dandruff, facts being it was not wholly a vegetable product, but was composed of sodium hydroxide or lye, fatty acids, water and ash, with said lye being principal active ingredient thereof, character of person's hair is determined by shape of opening of hair follicles imbedded in flesh underneath scalp, outside application will not change their shape or permanently change character of hair, and use of said product will not straighten hair except temporarily, nor even that, except for short period of time, through enabling it to be pulled straight, when, by application of said vaseline and as long as same remains on hair, kinking or curling thereof will be prevented, and, while use thereof, with accompanying shampoo as directed, will facilitate removal of dandruff scales, it will not prevent reformation thereof nor in any way cure, ameliorate, or permanently remove dandruff, and will not stop hair from falling out or promote growth thereof;
- (b) Represented that said preparation constituted greatest discovery of the age, and that its use would benefit offspring of its users, and that it was safe and harmless, facts being such was not the case, by virtue of the $4\frac{5}{10}$ percent content of hydroxide or lye, and use thereof, with its said dangerous chemical irritant content, might result in severe caustic action upon skin and scalp, with resulting destructive burns of the first and second degree, and said preparation would not benefit offspring of users in any way and it was not greatest discovery of the age; and
- (c) Failed to reveal in said advertisements that use of such preparation, under conditions prescribed therein or under such conditions as are customary or usual, might result in serious injury to user;

With capacity and tendency, through use of aforesaid false, misleading, and deceptive statements and representations disseminated as aforesaid, and its failure to reveal danger inherent in said preparation, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief