

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

that such statements, representations, and advertisements were true, and into purchase by public of substantial quantities of its said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Donovan R. Divet for the Commission.

Mr. Aaron L. Gitenstein, of Brooklyn, N. Y., and *Mr. Eustace V. Dench*, 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 Kongo Chemical Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kongo Chemical 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 principal office and place of business located at 66 East One Hundred and Thirty-first Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation known as "Kongolene," intended for use on the hair. Respondent causes its said preparation, when sold, to be transported 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

In connection with the sale and distribution of said product "Kongolene" as aforesaid, respondent sells and distributes another cosmetic preparation known as "Ebonized Ground Oil" which is represented by respondent to be "a necessary adjunct to Kongolene" and which respondent directs purchasers of "Kongolene" to apply to their hair after they have used "Kongolene." Said product, Ebonized Ground Oil, is a dark-colored, perfumed vaseline.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements con-

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cerning its said product, Kongolene, by 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 its said product; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 United States mails, by circulars, and other advertising literature, and by various other means in commerce, are the following:

Kongolene is a purely vegetable product.

Kongolene, The Veribest yet Positively straightens the hair.

Kongolene will certainly straighten your hair, but you must give it time to work.

It is a specialty and will straighten the crimpiest kind of hair, stops it from falling out, promotes a luxuriant growth of healthy hair, removes dandruff and keeps the hair soft and glossy. Kongolene is the greatest discovery of the age.

* * * It will benefit you for generations to come, if you are homely, likewise will be your offsprings, if you are handsome, they will be likewise.

Kongolene has a little smarting sensation, something like menthol, but do not be alarmed, it is one of the ingredients doing its work, do not allow it to smart the scalp too much before you wash it out.

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar thereto not specifically set out herein, the respondent has represented directly and by implication that its said product "Kongolene" is a pure vegetable product; that its use will straighten the hair, will stop hair from falling out, will promote the growth of hair, and will cure and permanently remove dandruff; that it is the greatest discovery of the age; that its use will benefit the offspring of its users; and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, said product "Kongolene" is not wholly a vegetable product, but is composed of sodium hydroxide or lye, fatty acids, water, and ash, the said sodium hydroxide being the principal active ingredient thereof. The character of a person's hair is determined by the shape of the opening of

the hair follicles, small glands or depressions from which the hair grows. These follicles are imbedded in the flesh underneath the scalp and no application to the outside body will change their shape or permanently change the character of the hair. The use of said product will not straighten the hair except temporarily, and will not straighten it even temporarily, except by softening it for a short period of time, thereby enabling it to be pulled straight. When thus pulled straight the application of a vaseline, such as respondent's Ebonized Ground Oil, will prevent the hair from kinking or curling, but only so long as the said vaseline remains on the hair.

Hairs are shed constantly and in many instances are replaced by new hair from active hair follicles or glands. No external application to the hair or scalp can favorably influence the growth of hair and the use of said product "Kongolene" does not stop hair from falling out and does not promote the growth of the hair. Said product is not the greatest discovery of the age. Its use will not benefit the offspring of its users in any way. The use of said product "Kongolene" with the accompanying shampoo directed by respondent will facilitate the removal of dandruff scales, but will not prevent the reformation of dandruff scales, as they are the result of a normal exfoliating process of the skin and scalp. The use of said product will not in any way cure, ameliorate, or permanently remove dandruff.

Said product "Kongolene" is not safe or harmless, as it contains 45/10 percent sodium hydroxide or lye, which is a dangerous chemical irritant. The use of said product may result in severe caustic action upon the skin and the scalp, with resulting destructive burns of the first and second degree.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious injury to the user.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation "Kongolene," disseminated as aforesaid, and its failure to reveal the danger inherent in said preparation, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondent's preparation.

PAR. 7. The aforesaid acts and practices of the respondent 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 July 24, 1940, issued and on July 25, 1940, served its complaint in this proceeding upon the respondent, Kongo Chemical Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint, and after the introduction of certain evidence in support of said complaint, the Commission, by order entered herein, granted respondent's 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, substitute answer, and evidence, 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. Respondent, Kongo Chemical 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 principal office and place of business located at 66 East One Hundred Thirty-first Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation known as "Kongolene," intended for use on the hair. Respondent causes its said preparation, when sold, to be transported 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

In connection with the sale and distribution of said product "Kongolene" as aforesaid, respondent sells and distributes another

cosmetic preparation known as "Ebonized Ground Oil" which is represented by respondent to be "a necessary adjunct to Kongolene" and which respondent directs purchasers of "Kongolene" to apply to their hair after they have used "Kongolene." Said product, Ebonized Ground Oil, is a dark-colored, perfumed vaseline.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said product, Kongolene, by 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 its said product; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 United States mails, by circulars, and other advertising literature, and by various other means in commerce are the following:

Kongolene is a purely vegetable product.

Kongolene, The Veribest yet Positively straightens the hair.

Kongolene will certainly straighten your hair, but you must give it time to work.

It is a specialty and will straighten the crimpiest kind of hair, stops it from falling out, promotes a luxuriant growth of healthy hair, removes dandruff and keeps the hair soft and glossy. Kongolene is the greatest discovery of the age.

* * * It will benefit you for generations to come, if you are homely, likewise will be your offsprings, if you are handsome, they will be likewise.

Kongolene has a little smarting sensation, something like menthol, but do not be alarmed, it is one of the ingredients doing its work, do not allow it to smart the scalp too much before you wash it out.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent has represented directly and by implication that its said product "Kongolene" is a purely vegetable product; that its use will straighten the hair, will stop hair from falling out, will promote the growth of hair, and will cure and permanently remove dandruff; that it is the greatest discovery of the age; that

its use will benefit the offspring of its users; and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, said product "Kongolene" is not wholly a vegetable product, but is composed of sodium hydroxide or lye, fatty acids, water and ash, the said sodium hydroxide being the principal active ingredient thereof. The character of a person's hair is determined by the shape of the opening of the hair follicles, small glands or depressions from which the hair grows. These follicles are imbedded in the flesh underneath the scalp and no application to the outside body will change their shape or permanently change the character of the hair. The use of said product will not straighten the hair except temporarily, and will not straighten it even temporarily, except by softening it for a short period of time, thereby enabling it to be pulled straight. When thus pulled straight the application of a vaseline, such as respondent's Ebonized Ground Oil, will prevent the hair from kinking or curling, but only so long as the said vaseline remains on the hair.

Hairs are shed constantly and in many instances are replaced by new hair from active hair follicles or glands. No external application to the hair or scalp can favorably influence the growth of hair and the use of said product "Kongolene" does not stop hair from falling out and does not promote the growth of the hair. Said product is not the greatest discovery of the age. Its use will not benefit the offspring of its users in any way. The use of said product "Kongolene" with the accompanying shampoo directed by respondent, will facilitate the removal of dandruff scales, but will not prevent the reformation of dandruff scales, as they are the result of a normal exfoliating process of the skin and scalp. The use of said product will not in any way cure, ameliorate or permanently remove dandruff.

Said product "Kongolene" is not safe or harmless, as it contains $4\frac{5}{10}$ percent sodium hydroxide or lye, which is a dangerous chemical irritant. The use of said product may result in severe caustic action upon the skin and the scalp, with resulting destructive burns of the first and second degree.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious injury to the user.

PAR 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation "Kongolene," disseminated as aforesaid, and its failure

to reveal the danger inherent in said preparation, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, evidence introduced in support of said complaint, and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Kongo Chemical Co., 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, or distribution of its cosmetic preparation designated "Kongolene," or any other preparation of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a purely vegetable product; that said preparation will permanently straighten the hair, or contribute to the straightening of the hair in any way other than by softening the hair temporarily; that said preparation will prevent hair from

¹ Order published as amended by Commission order of April 8, 1941, which set forth the filing of a petition for modification by respondent and that after due consideration it appeared that modification was warranted by public interest.

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falling out and promote the growth of hair; that said preparation will cure or permanently remove dandruff; that said preparation is the greatest discovery of the age; that the use of said preparation will benefit the offspring of the user; or that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may result in severe caustic action upon the skin and scalp with resulting burns: *Provided, however*, That said advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning that the preparation may result in severe caustic action upon the skin and scalp with resulting burns and that in order to avoid such caustic action and burns, the preparation should not be applied at any one time for a period of longer than 10 minutes and should be removed immediately when a pronounced sensation of warmth is experienced; the preparation should be removed by washing the hair and scalp thoroughly with large quantities of water at least four times and until no sensation of the presence of soap remains and the preparation must not be brought in contact with any part of the body except the hands, hair, and scalp and especially must not be brought in contact with the eyes or with the mucous membrane of the nose or of the mouth.

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 preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement does not conform in all respects to the affirmative requirements of paragraph 1 hereof.

It is further ordered, That the respondent shall, within 10 days after the service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order, and, if so, the manner and form in which it intends to comply; and that within 60 days after the service upon it of this order said respondent shall 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

JOE L. THOMPSON, TRADING AS PREMIUM CANDY
COMPANY

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

Docket 4287. Complaint, Aug. 29, 1940—Decision, Dec. 28, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) as illustrative, number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan in accordance with which purchaser paid therefor 1, 2, 3, 4, or 5 cents in accordance with particular number pushed by chance from card, and purchaser pushing last disk on card received extra bar of candy without additional cost, and (2) assortments with which he furnished various other push cards for use in sale and distribution of his candy by means of gift enterprise or lottery scheme and similar to that above described from which they varied in detail only;

Sold such assortments thus packed and assembled, together with said devices, to agents, wholesalers, jobbers, and retailers, by whom as direct or indirect purchasers thereof they were exposed and sold to purchasing public in accordance with aforesaid sales plan, involving game of chance, or sale of a chance to procure bars of candy at much less than normal retail price thereof, or additional bars without additional cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of his candy in accordance with sales plans or methods above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by a chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his candy and element of chance involved therein and were thereby induced to buy and sell his said candy in preference to candy of said competitors who do not use the same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting unfairly trade and commerce to him from his said competitors who do not use same or equivalent methods;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr., for the Commission.

Oates & Quillin, of Fayetteville, N. C., for respondent.