

Syllabus

IN THE MATTER OF
NATIONAL MINERAL COMPANY, TRADING AS HELENE
CURTIS INDUSTRIES

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

Docket 4185. Complaint, July 12, 1940—Decision, Mar. 12, 1941

Where a corporation engaged in competitive interstate sale and distribution of two products respectively designated as "Helene Curtis Duchess Machineless Oil Wave," or "Helene Curtis Duchess Machineless Oil Solution," and "Helene Curtis Duchess Machineless Pads"; by advertisements disseminated through the mails, in trade journals and other periodicals, and by circulars, pamphlets, and other advertising literature—

- (a) Represented, directly or through implication, that its said oil preparation supplied nourishment to the hair, imparted strength and vigor thereto and caused growth thereof, that it nourished and invigorated the hair roots and hair shaft, and that it was the original machineless oil wave, facts being said oil preparation was not capable of supplying any nourishment, strength or vigor to the hair, hair roots or hair shaft, nor of causing the growth of hair, and it was not the original machineless oil wave;
- (b) Represented, as aforesaid, that its said pads were equipped with a thermostatic device which controlled and regulated heat, facts being the device on said pads was not thermostatic, but only thermoscopic and merely indicated changes in temperature and would not control or regulate heat; and
- (c) Represented that it made the products it sold, through such statements as "Manufactured by National Mineral Co. * * * World's largest manufacturer of products for the beauty shop," facts being it did not manufacture its solution, but only the pads aforesaid, and was not such a manufacturer, preferentially dealt with directly on part of substantial portion of purchasing public as affording, in its belief, lower prices, superior quality, and other advantages;

With capacity and tendency to mislead and deceive members of purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of its said products because of such belief, with result that trade was diverted unfairly to it from its competitors:

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. R. P. Bellinger for the Commission.

Mr. Adolph A. Robinson, of Chicago, Ill., for respondent.

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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 National Mineral Co., a corporation, trading as Helene Curtis Industries, 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, National Mineral Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, trading as Helene Curtis Industries, with its office and principal place of business located at 3633 South Racine Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of a cosmetic product designed for curling or waving the hair and designated "Helene Curtis Duchess Machineless Wave." Said product consists of an oil preparation designated "Helene Curtis Duchess Machineless Oil Solution" and pads designated "Helene Curtis Duchess Machineless Pads."

Respondent causes and at all times mentioned herein has caused its said products, when sold, to be transported from its place of business in the State of Illinois to the 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 products 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 its business as aforesaid, respondent is in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of similar cosmetic products, or of other products designed and used for similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. 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 products 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 products; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said products by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of its said products 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 trade journals and other periodicals and by circulars, pamphlets, and other advertising literature, are the following:

Helene Curtis Duchess Machineless Oil Solution * * * the beneficial oil and vitamin content revitalize and invigorate the scalp roots and hair shaft to give lustre, sheen and matchless beauty.

Helene Curtis introduces the first, the original machineless oil wave * * * only Duchess solutions contain the oil and vitamin elements which, by bathing the hair strand in a protective film and nourishing the hair roots, supply the matchless results which will bring you greater fame and profit.

Hair glows with new health.

Only Duchess Solutions contain the oil and vitamin elements which can supply this matchless beauty.

The Helene Curtis Duchess Pad with its thermostatic control indicator.

Manufactured by National Mineral Company * * * World's largest manufacturer of products for the beauty shop.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented directly or through inference that its oil preparation supplies nourishment to the hair and imparts strength and vigor to the hair and causes the growth of hair; that it nourishes and invigorates the hair roots and hair shaft; that said oil preparation is the original machineless oil wave. Respondent also represents that its said pads are equipped with a thermostatic device which controls and regulates heat. Respondent further represents that its said products are manufactured by it.

PAR. 6. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's oil preparation is wholly incapable of supplying any nourishment to the hair or imparting strength or vigor to the hair or causing the growth of hair. It does not nourish or invigorate the hair roots or hair shaft. It is not the original machineless oil wave. The device on respondent's pads is not in fact a thermostatic device and will not

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control or regulate heat. Said device is in fact only a thermoscopic device which merely indicates changes in temperature. Respondent does not manufacture either of its said products but obtains them from other sources.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing direct with manufacturers, such preferences being due in part to a belief that thereby lower prices, superior quality and other advantages may be obtained.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief. As a result thereof, trade has been diverted unfairly to the respondent from its said competitors, and in consequence substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on the 12th day of July 1940, issued, and on the 16th day of July 1940, served, its complaint in this proceeding upon the respondent, National Mineral Co., a corporation, trading as Helene Curtis Industries, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 7, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent through its counsel, Adolph A. Robinson, Esq., and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts

in the proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Mineral Co., is a corporation, organized, existing and doing business under the laws of the State of Illinois, trading as Helene Curtis Industries, with its principal place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of two products, one designated as "Helene Curtis Duchess Machineless Oil Wave" and "Helene Curtis Duchess Machineless Oil Solution," the other as "Helene Curtis Duchess Machineless Pads." Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its place of business in the State of Illinois to the 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 products 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 its business as aforesaid, respondent is in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of similar products or of other products designed and used for similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said products 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

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inducing and which are likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and has caused the dissemination of false advertisements concerning its said products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and misrepresentations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in trade journals and other periodicals, and by circulars, pamphlets, and other advertising literature, are the following:

Helene Curtis Duchess Machineless Oil Solution * * * the beneficial oil and vitamin content revitalize and invigorate the scalp roots and hair shaft to give lustre, sheen and matchless beauty.

Helene Curtis introduces the first, the original machineless oil wave * * * only Duchess solutions contain the oil and vitamin elements which, by bathing the hair strand in a protective film and nourishing the hair roots, supply the matchless results which will bring you greater fame and profit.

Hair glows with new health.

Only Duchess Solutions contain the oil and vitamin elements which can supply this matchless beauty.

The Helene Curtis Duchess Pad with its thermostatic control indicator.

Manufactured by National Mineral Company * * * World's largest manufacturer of products for the beauty shop.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference, that its oil preparation supplies nourishment to the hair and imparts strength and vigor to the hair and causes the growth of hair; that it nourishes and invigorates the hair roots and hair shaft; that said oil preparation is the original machineless oil wave. Respondent also represents that its said pads are equipped with a thermostatic device which controls and regulates heat. Respondent further represents that its said products are manufactured by it.

PAR. 6. The foregoing representations are exaggerated, false and misleading. In truth and in fact respondent's oil preparation is not capable of supplying any nourishment to the hair or imparting strength or vigor to the hair, or causing the growth of hair; it does not nourish or invigorate the hair roots or hair shaft, and it is not the original machineless oil wave. The device on respondent's pads is not in fact a thermostatic device and will not control or regulate heat. Said device is in fact only a thermoscopic device which merely

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indicates changes in temperature. Respondent does not manufacture its oil solution, but only the machineless pads.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with manufacturers, such preference being due in part to a belief that thereby lower prices, superior quality, and other advantages may be obtained.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements, and representations, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief. As a result thereof, trade has been diverted unfairly to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Mineral Co., a corporation, trading as Helene Curtis Industries, 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 oil variously designated as "Helene Curtis Duchess Machineless Oil Wave," and as "Helene Curtis Duchess Machineless Oil Solution," and its cosmetic device known as "Helene

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Curtis Duchess Machineless Pads," or any other preparation or product of substantially similar composition or substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference—

(a) That respondent's cosmetic preparation designated as "Helene Curtis Duchess Machineless Oil Wave" and as "Helene Curtis Duchess Machineless Oil Solution" has any properties which are effective in supplying nourishment or strength to the hair, or causing hair to grow; that said preparation will nourish or invigorate the hair roots or hair shaft; that said preparation is the original machineless oil wave; that said preparation is manufactured by respondent, unless and until respondent owns or directly and absolutely controls a plant or factory herein said preparation is manufactured.

(b) That respondent's device designated as "Helene Curtis Duchess Machineless Pads" contains a thermostatic device, or that said device will control or regulate heat, or do more than indicate temperature changes.

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 cosmetic oil variously designated as "Helene Curtis Duchess Machineless Oil Wave," and as "Helene Curtis Duchess Machineless Oil Solution," or its device designated as "Helene Curtis Duchess Machineless Pads," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

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IN THE MATTER OF

VICTORIA CHEMICAL COMPANY, SCHWARZ DRUGGIST,
INC., SCHWARZ DRUG COMPANY, SCHWARZ DRUG
STORES, INC., HIRAM SCHWARZ, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4403. Complaint, Dec. 6, 1940—Decision, Mar. 12, 1941*

Where five corporations, with principal offices and places of business, as case might be, in Newark and Bloomfield, N. J., and White Plains, N. Y., and nine individuals, who were general officers of one or more of said corporations and formed their policies and directed and controlled their acts and practices, engaged in compounding, and in interstate sale and distribution of, their "Anti-Drink" drug-containing medicinal preparation, and cooperating in carrying out acts and practices below set forth; in advertisements which they disseminated and caused to be disseminated through the mails, in newspapers and periodicals, and through pamphlets, circulars, and other advertising matter, and by various other means in commerce and otherwise—

- (a) Represented, directly or by implication, that their said "Anti-Drink" preparation was a cure or remedy and competent and effective treatment for alcoholism and the liquor habit, through use of which desire for alcoholic stimulants was eradicated, and that such preparation was safe for use;

Facts being it was neither a cure or remedy nor competent or effective treatment for said condition or habit, and would not eradicate desire for said stimulants, and was not safe for use, by virtue of tartar emetic content in quantity sufficient to cause serious injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and thus used, might result in inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardio-vascular system and metabolic disturbances arising from the central nervous system; and

- (b) Failed to reveal facts material in the light of the representations contained in their said advertisements, and that use of their said product under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious injury to the stomach, intestinal tract, heart, and nervous system;

With the effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true, and of inducing such public to purchase substantial quantities of their said product as result of such belief:

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

Mr. Jesse D. Kash for the Commission.

Mr. Bertram S. Grand and *Mr. Michael Sokol*, of Newark, N. J., for respondents.