

Complaint

IN THE MATTER OF

ETHEL BELLAMY, INC.

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

Docket 4424. Complaint, Dec. 19, 1940—Decision, Apr. 28, 1941

Where a corporation engaged in interstate sale and distribution of its cosmetic and drug preparation designated as "Ethel Bellamy Eyelash Luxuriant"; by means of advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets, and other advertising literature—

Represented, directly and by implication, that its said product was of substantial therapeutic value in the treatment of granulated eyelids, and that use thereof promoted growth of eyelashes, supplied pigment thereto, and darkened them permanently;

Facts being that it possessed no therapeutic value in the treatment of granulated eyelids, was wholly incapable of affecting the growth of eyelashes and, while its properties as a dye might darken eyelashes temporarily, it had no permanent effect upon color thereof and did not supply any pigment thereto;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous and mistaken belief that such representations were true and of inducing thereby its purchase of substantial quantities of such product:

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. Randolph Preston*, trial examiner.

Mr. Donovan Divet 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 Ethel Bellamy, 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 Ethel Bellamy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its general offices and principal place of business located at 30 Elm Street, Nutley, N. J.

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PAR. 2. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of a cosmetic and drug preparation known and designated as "Ethel Bellamy Eyelash Luxuriant." Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of New Jersey 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 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Some years ago, I burned my lashes—they never grew—since I have started to use this amazing lash grower, they have grown about $\frac{1}{4}$ inch only using it three months. I recommend it very highly and can speak truthfully of the experience.

2. It has helped my lashes as they would never grow before, no matter what I used.

3. At the end of the second month, lashes had grown darker. On the lower lid, new ones had grown in.

4. My daughter has been using the eyelash luxuriant over a month and a lengthening and thickening of her eyelashes is quite apparent. She also was affected with granulated eyelids and your preparation has been of real benefit in helping remedy this condition.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented directly and by implication that respondent's said preparation Ethel Bellamy Eyelash Luxuriant is of substantial therapeutic value in the treatment of granulated eye-

lids; that its use promotes the growth of eyelashes; that it supplies pigment to the eyelashes and darkens eyelashes permanently.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's said preparation, Ethel Bellamy Eyelash Luxuriant, possesses no therapeutic value in the treatment of granulated eyelids. Said preparation is wholly incapable of promoting or affecting the growth of eyelashes. While said preparation, by reason of its properties as a dye, may serve to darken eyelashes temporarily, it is incapable of any permanent effect upon the color of the eyelashes. It does not supply any pigment to the eyelashes.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

PAR. 7. The aforesaid acts and practices of 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 December 19, 1940, issued, and on December 20, 1940, served its complaint in this proceeding upon respondent, Ethel Bellamy, 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 issuance of said complaint and the filing of respondent's answer, 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 and substitute answer, and the Commission, hav-

ing 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 Ethel Bellamy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its general offices and principal place of business located at 503 Franklin Avenue, Nutley, N. J.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the sale and distribution of a cosmetic and drug preparation known and designated as "Ethel Bellamy Eyelash Luxuriant." Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of New Jersey 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 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Some years ago, I burned my lashes—they never grew—since I have started to use this amazing lash grower, they have grown about $\frac{1}{4}$ inch only using it three months. I recommend it very highly and can speak truthfully of the experience.

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2. It has helped my lashes as they would never grow before, no matter what I used.

3. At the end of the second month, lashes had grown darker. On the lower lid, new ones had grown in.

4. My daughter has been using the eyelash luxuriant over a month and a lengthening and thickening of her eyelashes is quite apparent. She also was affected with granulated eyelids and your preparation has been of real benefit in helping remedy this condition.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented directly and by implication that respondent's said preparation Ethel Bellamy Eyelash Luxuriant is of substantial therapeutic value in the treatment of granulated eyelids; that its use promotes the growth of eyelashes; that it supplies pigment to the eyelashes and darkens eyelashes permanently.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's said preparation, Ethel Bellamy Eyelash Luxuriant, possesses no therapeutic value in the treatment of granulated eyelids. Said preparation is wholly incapable of promoting or affecting the growth of eyelashes. While said preparation, by reason of its properties as a dye, may serve to darken eyelashes temporarily, it is incapable of any permanent effect upon the color of the eyelashes. It does not supply any pigment to the eyelashes.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

CONCLUSION

The aforesaid acts and practices of 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.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the 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, Ethel Bellamy, 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 preparation designated "Ethel Bellamy Eyelash Luxuriant," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation possesses any therapeutic value in the treatment of granulated eyelids; that it promotes the growth of eyelashes; that it supplies pigment to the eyelashes; that said preparation darkens eyelashes permanently, or has any effect upon the color of the eyelashes in excess of such temporary effect as it may have by reason of its properties as a dye.

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.

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

AMERICAN PLIERENCH CORPORATION

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

Docket 3853. Complaint, Nov. 22, 1939¹—Decision, Apr. 30, 1941

Where a corporation engaged in the manufacture of a patent combination plier and wrench designated by it as "The Eifel-Geared Plierench Kit," and in competitive interstate sale and distribution thereof; in advertisements of its said kits in periodicals, booklets, pamphlets, letters, and other printed matter—

Represented that earnings to be made in the resale of said products by purchasers ranged from \$35 to \$125 a week and that purchasers who devoted their entire time to such sale made as much as from \$1,500 to \$4,000 a year; facts being that earnings by purchasers of said kits did not under any circumstances approach such amounts;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said representations were true and of inducing a substantial number thereof to purchase kits in question and thus unfairly divert trade to it from competitors who do not misrepresent earnings resulting from resale of their products:

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. Edward E. Reardon*, trial examiner.

Mr. Wilbur N. Baughman and *Mr. James I. Rooney* for the Commission.

AMENDED 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 American Plierench Corporation, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Plierench Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office

¹ Amended.